



**In re Baby PR (Child) (Adoption Cause E207 of 2022)
[2023] KEHC 20248 (KLR) (Family) (22 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20248 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E207 OF 2022
PM NYAUNDI, J
JUNE 22, 2023**

IN THE MATTER OF

**DMI 1ST APPLICANT
IWM 2ND APPLICANT**

JUDGMENT

1. The Applicants, David Maina Ihure and Idah Wanja Mboani vide Originating Summons dated November 10, 2022 have made an application for the adoption of Baby Peter Rock the child herein. The applicants met at Nairobi in 2003 and got married on August 6, 2005 through a church wedding held at PCEA Kawangware Church and have attached a copy of marriage certificate serial number 418729. They wish to adopt the child with intention to complete their family.
2. The matter proceeded for hearing via *viva voce* evidence on the Teams virtual platform on June 15, 2023.
3. The Applicants are Kenyan Citizens and of the Christian faith. They aver that they have the financial means and capability to take care of the Child. The 1st applicant works as a taxi driver, the second applicant is a businessperson operating a grocery at Waithaka. They have had custody of the child since September 15, 2018. They reside in Mukarara Estate at Waithaka. They fully understand the consequences of an adoption order.
4. The child was found abandoned in Githurai Kasarani, Kamuti village on January 8, 2016. He was presented to Kasarani Police station, at that time he as identified as an “unknown baby boy”, by Hellen Njeri of mobile number 0705127871.
5. The matter was recorded at Kasarani Police Station vide OB 23/8/01/2016. The child was estimated to be 3 weeks old at the time of reporting. Through the Children’s Office, the child was placed at the Happy Life Children’s Home Kasarani and christened “Peter Rock”.



6. On February 17, 2016 the child was committed to the care and protection of Happy Life Children’s Home by order of the Nairobi Children’s Court vide Protection and Care Case No 14 of 2016. On 12 October 2016, Kasarani Police Station confirmed that no one had claimed the child since he was reported abandoned.
7. Prior to the hearing of the adoption application, Change Trust Adoption Society prepared and filed a report dated July 22, 2018 and issued a certificate serial No 002681 declaring the child free for adoption. On January 19, 2023, the Court appointed a Guardian Ad litem Mr David Kamau Njoroge.
8. The Guardian Ad Litem, David Kamau Njoroge was present in Court and presented his report dated June 13, 2023. He confirmed that he visited the Applicants and the Child at their home and observed that they have bonded well, and the child is well taken care of. He has also bonded well with the extended family. He recommends that the Applicants be allowed to adopt the Baby.
9. An officer of the Department of Children Services, Winfred Ikinya prepared a report dated March 17, 2023, and counter signed by Nancy Waswa. The report established that the child was abandoned in Kamuti Area in Githurai and the matter was reported to Kasarani police station under OB NUMBER 23/8/01/2016. The report recommends that the Applicants be allowed to adopt the child.
10. The Report further documents that vide letter dated October 12, 2016; the Police confirmed that the child remained unclaimed. For this reason, the Department of Children Services confirms the child is free for adoption.
11. The proposed Legal Guardian Kellen Kangai Jacob attended court and confirmed she is willing to take up the role of legal guardian. She is the 2nd Applicant’s sister.
12. The Child was present in Court and the court interviewed him. He is 7 years old and attends Heri Junior. He recognises the Applicants as his parents. The court observed that the child was at ease and appears to have a warm relationship with the Applicants.
13. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child’s adoption. Section 186 of the [Children Act, 2022](#) provides.
 - (1) The Court may make an adoption order on application by—
 - a. A sole applicant; or
 - b. Two spouse jointly
 - (2) The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
 - (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
14. The Applicants are aged 45 years and 53 years respectively.



15. Article 53 of the Constitution of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child's Best interests are of paramount importance in every matter concerning the child

16. This principle is restated Under Section 8 of the Children Act, 2022 which provides Best interests of the child.

- (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies—
 - (a) The best interests of the child shall be the primary consideration;
 - (b) The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

Section 194 (1) (c) of the Act also requires that

"if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;"

17. In view of the foregoing, the court is of the considered view that it is in the child's best interest to be adopted by the Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated November 10, 2022 and order as follows:

- i. The Applicants David Maina Ihure and Idah Wanja Mbaoni be allowed to adopt Baby Peter Rock.
- ii. The Child to be known as Peter Migwi Maina.
- iii. The Child be presumed to be a Kenyan citizen by birth.
- iv. Kallen Kangai Jacob is hereby appointed as legal guardian of Child.
- v. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children.
- vi. The Director Immigration is authorized to issue the child with a Kenyan passport
- vii. The Guardian Ad litem is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 22ND DAY OF JUNE, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of

Court Assistant Karani

