



**In re Baby RE aka R (Adoption Cause E024 of 2023)
[2023] KEHC 20283 (KLR) (Family) (22 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ADOPTION CAUSE E024 OF 2023

PM NYAUNDI, J

JUNE 22, 2023

IN THE MATTER OF THE CHILDREN’S ACT,2022

AND

IN THE MATTER OF BABY RE AKA R

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

IN THE MATTER OF

SON 1ST APPLICANT

LMN 2ND APPLICANT

JUDGMENT

1. The Applicants, SON and LMN vide Originating Summons dated February 23, 2023 have made an application for the adoption of Baby RE Aka R the child herein. The applicants have been married for 28 years and have attached a copy of marriage certificate Serial number 93xxxx. They wish to adopt the baby with the intention to provide a home to a child who would not have the opportunity and transform the child’s life. The applicants have their biological children, two sons, who are adults.
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the 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 as Relief Development Worker at [particulars withheld], and The second applicant works as Lecturer at [particulars withheld] University of Kenya. They have had custody of the child since September 21, 2022. They reside in [particulars withheld] They fully understand the consequences of an adoption order.



4. The child is estimated to have been born on May 3, 2018. The minor was left abandoned by her mother at Park Road Area and was rescued by Good Samaritan namely VM of mobile No 0721xxxx and ID Number 2631xxxx. She then took the child to Pangani Police Station and booked vide 52/02/xx/2019. On January 3, 2019, the minor was admitted to ReXXX Children's Home for care and protection. During admission to the home, the baby was weighing 9.6Kgs. On March 31, 2021, Starehe Sub County Children's officer wrote a letter to the court requesting for the child's committal. The child was committed to Rehema Pefa Home on June 15, 2022 through a children's court in Nairobi for care and protection vide Care and Protection case number 1XXX/2019.
5. The minor's mother had been living in the streets and would always get food from the mentioned Good Samaritan. She reported that the child's mother left after eating the food and never came back. The Good Samaritan is not willing to write a statement.
6. On August 31, 2022, Pangani Police Station issued a second Police letter indicating that their effort to trace the mother or kindred have been fruitless. On September 6, 2022 at 3:02 PM, Buckner Kenya Adoption Services made an effort to contact the Good Samaritan Vm on the mobile number of 07211xxxx, who confirmed to them she rescued the minor and that she has never heard anyone claiming her since the rescue.
7. Rehema Pefa Children's Home reports that during her stay in the institution that no relative had turned up to claim the child, and neither have received any information from the police department concerned regarding any claimants.
8. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated September 6, 2022 and issued a certificate serial No 05xxx declaring the child free for adoption. The Court appointed a Guardian Ad litem GVC.
9. The Guardian Ad Litem, Grace Vihenda Chagwaya was present in Court. She confirmed that she visited the Applicants and the Child at their home and observed that they have bonded well, and the child is well taken care of. She recommends that the Applicants be allowed to adopt the Baby.
10. An officer of the Department of Children Services, Winfred Ikinya prepared a report dated May 29, 2023. The report established that the child is estimated to have been born on May 3, 2018. The minor was left abandoned by her mother at Park Road Area and was rescued by Good Samaritan namely VM of mobile No 07211xxxx and ID Number 2631xxxx. She then took the child to Pangani Police Station and booked vide 52/02/xx/2019. The report was counter-signed by NW
9. Through Starehe Sub County Children's officer letter to the court requesting for the child's committal. The child was committed to Rehema Pefa Home on June 15, 2022 through a children's court in Nairobi for care and protection vide Care and Protection case number 1XX5/2019. The child attends [particulars withheld] School in Ngong and is in Pre-primary II.
10. The proposed Legal Guardian GN attended court and confirmed he is willing to take up the role of legal guardian. He is the son of the applicants.
11. 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.
The Court may make an adoption order on application (1) by-
 - a. A sole applicant; or
 - b. Two spouses 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.

12. The Applicants are aged 55 years and 52 years respectively.

13. 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

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

In all actions concerning children, whether undertaken

- (1) 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;

15. 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 December 6, 2022 and order as follows:

- I. The Applicants SON and LMN be allowed to adopt baby RE Aka R
- II. The Child is to be known as SNN.
- III. The Child be presumed to be a Kenyan citizen by birth.
- IV. GN 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 of 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

