



**In re Baby JP (Adoption Cause E004 of 2022)
[2023] KEHC 18868 (KLR) (15 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18868 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
ADOPTION CAUSE E004 OF 2022
FN MUCHEMI, J
JUNE 15, 2023
IN THE MATTER OF ADOPTION OF BABY JP ALIAS JWM**

IN THE MATTER OF

**GMK 1ST APPLICANT
JNM 2ND APPLICANT**

JUDGMENT

Brief Facts

1. The Originating Summons is dated April 26, 2022 seek for orders for adoption of Baby JP by the applicants as well as orders for the Registrar General to make the necessary entry in the Adoption Register. The applicants filed reports on their suitability to adopt the child. The consents of one GMK to be adopted as guardian ad litem as well as the legal guardian.
2. The child was abandoned by her mother at Nanyuki who had requested one MW to hold the baby for her as she went to answer a call of nature. The mother was never to return and MW reported the matter to Nanyuki Police station. The child was placed at a temporary care centre for some time pending committal to a foster parent. The child was later placed under the care and control of the applicants by the court on December 6, 2017.
3. The Child Welfare Society made adverts to the local dailies in an effort to trace the mother or any other relative of the child but it was all in vain. The child was to be declared an abandoned child under the law and the applicants have now stayed with it for about five (5) years.
4. The child remained at society’s Temporary Place of Safety and was declared free for adoption on October 31, 2016. The applicants took care and control of the child from December 6, 2017 at the age of 5 years. The applicants are 60 and 61 having married under African Customary Law System in 1989. It is further stated that the applicants are financially stable as they have income from farming of both subsistence and cash crops.



5. At the time of making the application, the applicants proposed one GMK to be appointed as the guardian *ad litem* as well as the legal guardian of the child. As a legal guardian the appointee takes care of the child in the event of death or incapacity of the applicants or any of them before the child is of full age and self-reliant. The proposed guardian filed her consents to act in the proposed capacities.

Issue for Determination

6. The main issue for Determination is whether the applicants have satisfied the legal requirements under the *Children's Act* to be granted the adoption order.

The Law

7. The preliminary requirements for the making of an adoption order are set out in Section 156(1) of the *Children's Act* (now repealed) which provides as follows:-

"No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free or adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf."

8. Thus for an adoption order to ensue the following ought to be taken into consideration:-
 - a. A child must be at least six (6) weeks old and free for adoption;
 - b. The child concerned must have been in the continuous care and control of the applicant within Kenya for a period of three (3) consecutive months preceding the filing of the application; and
 - c. Both the child and the applicant have been evaluated and assessed by a registered adoption society in Kenya.
9. In the adoption cause, the minor was abandoned, a fact confirmed by at Nanyuki Police Station vide a letter dated December 12, 2013 and OB No xx/xx/xx/2013. Similarly, the abandonment of Baby JP is reiterated and confirmed by the Child Welfare Society in the Certificate of Declaring a Child Free for Adoption dated October 31, 2016, a report declaring the child available for adoption dated May 17, 2022. A Social Enquiry Report by the Department of Children's Services Nyeri County also confirmed the facts in their statutory report. Neither the police nor the institution to whom the committal for care and protection were given, have received any claim for the child since it was abandoned. Under the Act, legal abandonment may be presumed pursuant to Section 159(1)(a)(i) of the *Children Act* (now repealed) which provides:-

"Abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months."
10. Pursuant to Section 158 (1)(a) of the *Children's Act* (now repealed) the applicants are within the age limit eligible to adopt being an adult having attained the age of twenty five (25) years and are at least 21 years older than the child but has not attained the age of sixty five (65) years. It is also worth noting that the applicants have had uninterrupted care and custody of the child for the last five (5) years.
11. The Department of Children's Services through the Nyeri County Director report recommended the applicants for the adoption of the child in their report filed in court on December 16, 2022. Similarly, the Guardian *ad litem* who was appointed on May 31, 2022 made a positive recommendation stating that adoption of Baby JP by the couple would be in the best interests of the child. The various reports show that the applicants have taken the child to their home; that they have the financial capability to



take care of the child; that their home environment is safe and secure as well as satisfactory; that the child is relating well with the applicants and that the applicants have not received or agreed to receive any reward in consideration for the adoption.

12. Having considered the material laid before the court, I am of the view that it has become impossible to trace the mother of the child and that her consent is hereby dispensed with. It is evident from the record that the applicants have looked after the child well for the period they have stayed with her and that it is in the best interests of the child for the applicants to adopt it.
13. The applicants have already been made aware of their legal duties and responsibilities over the child and have expressed their willingness to meet the obligations as by law established.
14. It is my considered view that the applicants have complied with all the requirements of the law for purposes of adoption and that the adoption sought herein is in the best interests of the child. The originating summons dated April 26, 2022 is allowed in the following terms:-
 - a. That the applicants are hereby authorized to adopt Baby JP who will now be known as JWM.
 - b. That GMK is hereby appointed the Legal Guardian of the child.
 - c. That the Registrar-General is hereby directed to make the necessary entry in the children's Adoption Register.
15. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 15TH DAY OF JUNE, 2023.

F. MUCHEMI

JUDGE

JUDGEMENT DELIVERED THROUGH VIDEO LINK THIS 15TH DAY OF JUNE 2023.

