



**In re MW (Baby) (Adoption Cause E028 of 2021)  
[2023] KEHC 20936 (KLR) (24 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20936 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ADOPTION CAUSE E028 OF 2021  
MW MUIGAI, J  
JULY 24, 2023  
IN THE MATTER OF CHILDREN ACT 2022  
AND  
IN THE MATTER OF BABY MAGDALENE WANJIKU  
BY**

**IN THE MATTER OF**

**CWN ..... APPLICANT**

**JUDGMENT**

1. The Applicant, C W N - ID No.9xxxxxx9 known as the ‘Applicant’ herein sought by her application to be allowed by this court to adopt M W (hereafter’ the minor).
2. Vide Originating Summons application dated November 23, 2021, the Applicant sought among other orders that G J K be appointed as the child’s Guardian Ad Litem, that the Applicant C W N be authorized to adopt baby M W, that the Director Children Department, investigate the case and file report, that the Registrar General shall make in the adopted Children’s register an entry the adoption in accordance with the particulars set out in the schedule attached thereto of G J K.
3. The child known as M W who is the subject of these proceedings was born to L W N on the September 26, 2008 at Athi River Medical Services in Machakos County. The details of the minor’s father are unknown since the Certificate of Birth Serial No.1xxxx3 did not indicate her father’s name. The minor’s mother passed on February 9, 2014 vide Certificate of Death Serial No. 2xxxx2 leaving behind the child subject of these proceedings and her elder brother who is already an adult.
4. According to the family no one was ever introduced to them or showed up from the time Magdalene was born claiming to be her father or participating in her upbringing as a father therefore as far as the family is concerned M was orphaned the time she lost her mother. After the death of the minor’s mother, Magdalene moved into the Applicant’s (C W N) home at Kitengela for she had no one to take



- care of her after the demise of her mother in 2014 and her grandmother who she lived with previously relocated to the USA. The Applicant took all the parental responsibilities over the child and has loved and cared for M just like she has done to her own biological daughters namely; A K M born in 1989, J W born in 1993, T W born in 1997, M W born in 2002 and E M born in 2008. The said children have consented to the adoption of Ma (minor) vide their consent dated March 3, 2022. The Applicant wishes to adopt the child to have full rights legally to perform parental obligations over the child and secure the child's future in a family set up.
5. Ken Nyamu of ID No.3xxxxxx3, a resident of Athi River is Magdalene's elder brother. He is aware of the intended adoption and has consented to it vide his consent dated February 16, 2022. According to him the Applicant has been more than a mother to them since the demise of their biological mother.
  6. The applicant is the minor's maternal aunt (she is a sister to the late L W N the mother to M (minor)) and she desires to adopt her niece to have full parental responsibility over her legally. This will give the minor an opportunity to live in a family that she belongs to and foster a sense of security. All the Applicant's siblings are in support of these adoption vide their consent dated March 1, 2022.
  7. On May 19, 2023 Buckner Kenya Adoption Services declared the minor free for adoption vide a Certificate of Declaring a Child Free for Adoption Serial No. 0641.
  8. The following documents were availed from Buckner Kenya Adoption Services for M W(Minor)
    - Birth Certificate for M W
    - Death Certificate for L W N(the minor's mother)
    - The minor's elder brother – K N letter of consent
    - Legal Guardians letter of consent
    - Applicants biological children letters of consent
    - Applicants siblings consent
    - Copies of Identification Cards for the Legal Guardians
    - Medical Report for the Adoptive parent
    - Certificate of acknowledgement from Buckner Kenya Adoption Services
    - Confidential referee information
    - Introduction letter of the Applicant in respect of the Applicant from Rev. Josephat Makau St. Jude's Catholic Parish
  9. Pursuant to Section 187 (2) (1) of the [Children Act 2022](#), Buckner Kenya Adoption Services, the relevant Adoption Society, prepared and filed in Court a favourable report dated June 12, 2023 in respect of the proposed adoption of the child by the Applicant.
  10. Mr. James Jumba the Social worker at the said Adoption Agency appeared in Court on June 14, 2023. He told the Court that this is a kinship adoption as the Applicant is a sister to the minor's mother L W N (deceased). The Applicant took the minor in the year 2014 after the minor's mother Lucy Waruguru Nyamu passed on vide death Certificate Number 290472. The Applicant has five biological children. Four of the children are over 18 years. The children are namely A K M, J W M, T W M, M W M and E M M who all gave written consents to the adoption of their cousin (M the minor herein) dated March 3, 2022.



11. The report contains family and professional background information of the Child's Adoptive Parent. According to the report the Applicant approached the Buckner Kenya Adoption Services applying to adopt her niece aged 14 years. The child is a daughter to her late sister Lucy Waruguru who passed on February 9, 2014. The Applicant is of sound mind and in good health as per the medical records filed and capable of exercising proper care and guardianship of the child. She has no criminal record as per the police clearance certificate serial No. PCC-J5TPP3VO. The Society took her through the relevant interviews and a home assessment was carried out and she was found eligible and at the Buckner Kenya Adoption Services Case committee sitting on May 19, 2023 approved her application.
12. The Applicant was married to J M (deceased) who passed on in the year 2004. The Applicant lives in a 2 bedroomed house in Kitengela connected with water and electricity. She is self-employed venturing into business of selling clothing and shoes in Kitengela. The house has a perimeter fence and lockable gate that provides good security. The Applicant is a Christian, she attends St. Jude Catholic Church.
13. The proposed legal guardian is R G (a brother to the Applicant) and his wife M N. The extended family members are very supportive of the adoption. All the applicants' siblings have supported their elder sister as suitable to adopt Magdalene. The Buckner Kenya Services Committee recommended the kinship adoption by the Applicant.
14. The proposed Guardian ad Litem, J K G of ID No. 2xxxxxx9 filed his Report on December 15, 2021 in support of these Adoption proceedings. He stated that he is an uncle to the minor and was in support of the adoption.
15. The Director of Children Services did not file their report in respect of these proceedings which is mandatory for the said Department to file a Report in Court or indicate any objection or consent to the Adoption after conducting investigations in the matter.
16. The legal Guardians Raphael Njagi Gakinya of ID NO 2xxxxxx5 (a maternal uncle to the minor) and his wife Margaret Njoki of ID. No. 3xxxxxx3 filed their letter of consent dated February 1, 2022. They stated that they understood that as the legal Guardians they are expected to take over parental responsibility over the minor in case of any eventuality of the Applicant or total incapacitation and disability. They consented to be the Legal Guardians of the child and recommended the adoption.
17. The statutory reports that have been filed in respect of the proposed adoption of the child by the Applicant have recommended that this court allows the adoption of the child. However, This court has noted that there is no Report from the Director of Children Services either in support or in objection of the said Adoption. There is no financial evidence to prove that the Applicant is capable to take care of the minor.
18. The Applicant have not fulfilled all the legal requirements relative to the adoption of the child as per Section 186 Children's Act 2022.

## **DISPOSITION**

1. No Adoption until the following are provided:
  1. Avail details of Applicants capability/financial statements.
  2. Director Children's Services Report.

It is so ordered.

**DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS THIS 24<sup>TH</sup> DAY OF JULY, 2023 (PHYSICAL/**



**VIRTUAL CONFERENCE).**

**M. W. MUIGAI**

**JUDGE**

**IN THE PRESENCE OF:**

**NO APPEARANCE -FOR THE APPLICANT**

**GEOFFREY/PATRICK/ COURT ASSISTANT(S)**

