



REPUBLIC OF KENYA



KENYA LAW
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**In re JA (Child) (Adoption Cause E236 of 2022)
[2023] KEHC 21755 (KLR) (Family) (14 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21755 (KLR)

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

FAMILY

ADOPTION CAUSE E236 OF 2022

PM NYAUNDI, J

JULY 14, 2023

IN THE MATTER OF THE CHILDREN'S ACT, 2022

AND

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY JA

IN THE MATTER OF

JM APPLICANT

JUDGMENT

1. Before this court is the Amended Originating Summons dated October June 13, 2023 and a further affidavit dated June 13, 2023 by which the applicant JNM seeks the following orders:-
 - a. That to adopt Baby JA (hereinafter referred to as 'Child'),
 - b. That the child be renamed METM and that she be presumed a Kenyan citizen by birth.
 - c. That the child's date of birth be April 23, 2021 and the place of birth be Kiganjo, Gatundu South in Kiambu County.
 - d. That the Director of Children Services be ordered to investigate the fitness of the applicants to adopt and file the requisite Report.
 - e. That SMM be appointed the legal guardian of the child in the event of the death or incapacity of the Applicant before the child is of age or independent.
2. The matter was canvassed by way of vive voce evidence on the virtual platform where the Applicant stated that she is a Quantity Surveyor and she runs her own firm known as [Particulars withheld].
3. The Applicant is a Kenyan Citizen. She is single she has never been married. She has lived with the subject since April 22, 2022. The subject is 2 years and months. The applicant resides in Nairobi



- within the Republic of Kenya. She asks the court be allowed to adopt the child. She understands the implications of an adoption order. She has no biological children of her own hence her desire to adopt.
4. Baby JA , the child herein is a female Child presumed to have been born on April 23, 2021. She was found abandoned at a coffee plantation within [Particulars withheld] area in Gatundu by a good Samaritan VM She was rescued and the matter was reported to the area Assistant Chief as well as to the Gatundu Police Station and recorded vide O.B No. 37/24/04/2021 as confirmed by a letter from the Station dated May 4, 2021.
 5. The child was admitted at Gatundu Level Five Hospital for medical attention and discharged on April 29, 2021.
 6. The child was later admitted at New Life Home Trust Nyeri on 4th May, as a Child in need of care and protection on January 14, 2016.
 7. She was later committed to the said Home by the Principal Magistrate's Court in Gatundu on September 14, 2021 vide Care and Protection File MCP&CCO/E005/2021.
 8. Gatundu Police Station confirmed by their letter dated February 16, 2022 that nobody went to claim the Child and that attempts to trace the parents of the Child were fruitless.
 9. The child was declared free for adoption by Buckner Kenya Adoption Services on February 25, 2022 and a certificate confirming she is free for Adoption serial no. 0531 was issued pursuant to section 65 of the *Children's Act, 2022*.
 10. Sharon Nekoye Inzaule the proposed guardian ad-litem filed her consent to act as guardian ad-litem of the child on December 15, 2022 and was so appointed by the court January 20, 2023. She filed her Report on March 3, 2023. In her Report and viva voce evidence, she stated that she visits the applicant's home almost weekly since there are neighbours and from her observations, the applicant has bonded well with the child. She also stated that the applicant was socially and financially stable to provide for the child and that the applicants' family members had accepted the child as part of the family. She confirmed that the applicant had no criminal record and that she is in good health. She noted a good bond between the applicant and the child and thus recommended the adoption.
 11. The Children Officer from the Department of Children Services filed their Report on February 28, 2023 pursuant to the court order dated January 20, 2023. She confirmed that the child and the applicant had bonded well.
 12. The Report also confirmed that the applicant is socially and financially capable of raising the child. It also confirmed that the applicant had a clean bill of health and that she had no criminal record as evidenced by copies of her certificate of good conduct referenced as PCC-MOT202VW and medical records attached.
 13. The Report further stated that the applicant had fulfilled all the pre-requisites for a local adoption under section 185 the *Children's Act, 2022* and subsequent Children Regulations, 2005. They recommended the adoption without reservation as it will be in the best interests of the Child.

DETERMINATION

14. The court has evaluated the facts of this local adoption from the Reports filed. It is evident that the Applicant has fulfilled all the legal requirements of a local adoption as required under section 184 of the *Children's Act, 2022*. All the necessary Reports and consents required for this Adoption have been filed. The consents of the biological parents of the child are hereby dispensed with as the same cannot be obtained as the child is an abandoned child.



15. This court has satisfied itself that the applicant is qualified and able to take care of the child. The home visits conducted by the guardian ad litem and the representative of the Department of the Children's Services established that the Applicant has the financial and emotional capability to provide for the upkeep, care and education of the child and that the child has bonded well with the applicant.
16. Article 14 (4) of the Constitution of Kenya 2010 provides that: -
- “(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by Birth.”
17. This court is therefore of the opinion that this Adoption would be in the best interest of the child and allows the Applicants' application that;
- a. The applicant, JNM is hereby allowed to adopt Baby JA .
 - b. Henceforth, the child shall be known as METM .
 - c. Her date of birth shall be 23RD APRIL, 2021 and the place of birth be Kiganjo, Gatundu South, Kiambu County
 - d. She is presumed to be a citizen of Kenya by birth.
 - e. SMM (the applicant's sister) is hereby appointed as legal guardian of the child
 - f. The Registrar General to enter this order in the Adoption Children Register.
 - g. The Director Immigration be authorised to issue the child with a Kenyan Passport.
 - h. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 14th DAY OF July, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Onsongo Advocate for Applicant

Court Assistant Sylvia

