



**In re Baby JM (The Child) (Adoption Cause E053 of 2023)
[2023] KEHC 21978 (KLR) (Family) (7 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21978 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E053 OF 2023
MA ODERO, J
JULY 7, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY JM (THE CHILD)
PGN1ST APPLICANT
EWW.....2ND APPLICANT**

JUDGMENT

1. Before this court is the Originating Summons dated March 14, 2023 by which the Applicants PGN and EWW seek the following orders:-
 - “ 1. That the applicants be authorized to adopt BABY JM, a minor who is to be known as JBG and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 2. That TON and CNM be appointed as the legal guardians of the child.
 3. That the child be presumed to be born in Kenya.
2. The Application was supported by the affidavit of even date sworn by the applicants. The matter was canvassed by way of vive voce evidence on the virtual platform.
3. The applicants are a couple who met in the year 2008 and began a relationship in 2012. They solemnized their union at the [particulars withheld] Church in the year 2014.
4. The couple have been unable to have children of their own due to medical complications. They now wish to adopt the subject child in order to complete their family and out of a desire to provide a needy child with a home.



5. The Applicants both confirmed that they are aware of the legal implications of an adoption order. They undertook to accord to the subject child all the rights due to a biological child including the right to inherit.

Analysis and Determination

6. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
7. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act* 2022: -
 - “(1) A person shall not commence any arrangements for the adoption of a child unless—
 - (a) the Council, in accordance with the rules, has declared the child free for adoption; and
 - (b) the child has attained the age of six weeks.”
8. The subject child is believed to have been born on March 30, 2021. He is therefore now aged two and half (2½) years old and is above the six (6) weeks age limit provided for in law.
9. Buckner Kenya Adoption Services which is a registered adoption agency have annexed to their report the original copy of their certificate serial No. 0XXXXX7 declaring the child Free For Adoption. I am satisfied that the legal pre-requisites for an adoption order have been met.
10. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. The applicants are both Kenya citizens as evidence by the annexed copies of their National Identity Cards (Pages 1-2 of the summons).
11. The applicants are a married couple who solemnized their union on February 8, 2014 at [particulars withheld] Church. A copy of their marriage certificate serial No.7XXXXX8 appears at Page 3 of the summons. The couple have no child of their own but now seek to complete their family by adopting a child.
12. The applicants are both gainfully employed. The 1st applicant runs a Fire Safety Business known as '[particulars] Fire and Safety' Annexed at Page 39 of the summons is a copy of the certificate of Registration for this business.
13. The 2nd applicant is employed as a Business Development Officer with the [particulars withheld] SACCO. She also runs a salon business. The Applicants have annexed copies of a bank statement for an account held with Equity Bank (see Page 29-34 of the summons). I find that the applicants are financially secure and have the means to provide for the child.
14. The applicants are both committed Christians and intend to raise the child in the Christian faith. Annexed at Page 28 of the summons is a recommendation letter written by Pastor KM of [particulars withheld] Church where the applicants are active members.
15. The applicants were both examined by a doctor and were found to be of sound mental and physical health. They have annexed at Pages 40-43 copies of clearance certificates issued to them by the Directorate of Criminal Investigations proving that neither has a criminal record.



16. The applicants stated that their respective families are aware of and support their intention to adopt the subject child. They have appointed their close family friends as legal Guardians for the child. The proposed legal Guardians TON and CNM have both signed a consent dated March 14, 2023 indicating their willingness to be appointed as legal guardians for the child.
17. All in all I am satisfied that the applicants are suitable adoptive parents.
18. The subject child is a boy child who is believed to have been born on or about March 30, 2021. On September 30, 2021 at the age of Six (6) months the child was abandoned at the Chuma Mbili area of Githuria 45. A good Samaritan rescued the baby and reported the matter at Githurai Kimbo Police Station vide OB Number 3 of the September 30, 2021.
19. Thereafter on July 8, 2022 the Nairobi Children’s Court committed the child to the New Life Home Trust for Care and Protection. On August 12, 2022 the child was released into the custody of the Applicants under a Foster Care Agreement.
20. 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.”
21. The subject child was found abandoned at the age of Six (6) months in the Githurai area of Nairobi County within the Republic of Kenya. He is therefore presumed to be a Kenyan citizen by birth.
22. Given the fact of the child’s abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 187(1)(a) of the *Children Act* 2022.
23. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the *Children Act* 2022 provides:-
 - “(8). (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;” [own emphasis].
24. This is a child who was abandoned a few months after this birth. He faced an uncertain future living in various children homes. This adoption allows the child the opportunity to be raised in a stable and loving home environment.
25. The child has lived with the applicants for close to one (1) year. He has no doubt bonded with them and views the Applicants as his parents. I was able to see the child online. He was a cheerful boisterous toddler who smiled and waved happily at the camera. The child was clearly very comfortable in the presence of the applicants.
26. A home visit was conducted on June 9, 2023. The applicants live in a rented three bed-roomed apartment in Kikuyu. The home is within a secure compound with one gate and was found to be a suitable environment for raising a young child. The applicants have employed a Nanny to assist them in caring for the child.



27. In conclusion I am satisfied that this adoption will serve the best interest of the subject child. Accordingly I allow this application and make the following orders:-

- (1) The applicants PGN and EWW are hereby authorized to adopt the child known as BABY JM.
- (2) Upon adoption the child will be known as JBG.
- (3) The child is presumed to be a Kenyan citizen by birth and is entitled to all rights and privileges thereto.
- (4) The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
- (5) TON and CNM are appointed as the legal Guardians for the child.

DATED IN NAIROBI THIS 7TH DAY OF JULY, 2023.

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MAUREEN A. ODERO

JUDGE

