



**In re MF (Child) (Adoption Cause E055 of 2023)
[2023] KEHC 20389 (KLR) (Family) (7 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20389 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E055 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 MF (THE CHILD)**

IN THE MATTER OF

PKK 1ST APPLICANT

EWK 2ND APPLICANT

JUDGMENT

1. Before this court is the Originating Summons dated March 31, 2023 by which the Applicants PKK and EWK seeks the following orders:-

- “ 1. That the Applicants be and are hereby authorized to adopt the child currently known as BABY MF.
2. That if the adoption order is granted the said child is thereafter known as JKK.
3. That child's date of birth be declared to be May 15, 2021, and his place of birth to be declared to be Nanyuki, Laikipia County.
4. That the consent of the biological parents of the child be and is hereby be dispensed with since the child was abandoned.
5. That SMK and SWM may be appointed the legal guardians of the child in event of death or incapacity of the Applicants rendering them unavailable or incapable of taking care of the child.



6. That the Registrar General be directed to make appropriate entries in the Adopted Children's Register.
 7. That the child be considered as a Kenyan citizen.
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 got married under customary law in the year 2002. Due to medical complications their union has not been blessed with any children. The couple now wish to adopt the subject child to fulfil their desire to have a child of their own.
 4. The applicants both confirm that they understand the legal implications of an adoption order. They undertake to accord the subject child all rights which are due to a biological child.

Analysis and Determination

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. 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.”
7. The subject-child is a boy child who is believed to have been born on May 15, 2021. The child is now aged two (2) years old and is above the six (6) weeks age limit provided for in law.
8. Kenya Children's Home Adoption Society which is a registered adoption agency have annexed to their report a copy of their certificate serial No. xxx declaring the child Free For Adoption. I am satisfied that the legal pre-requisites for an adoption order have been met.
9. 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 Kenyan citizens as evidenced by the annexed copies of their national Identity Cards [Annexure 'EWK 3(a) and EWK 3(b)].
10. The Applicants are a couple who got married under customary law in the year 2002. They later solemnized their union on August 6, 2017. A copy of their marriage certificate serial Number xxxxxx appears as Annexure EWK '5' to the summons.
11. The Applicants have no biological children of their own and now wish to adopt a child in order to complete their family.
12. The applicants are both gainfully employed. The 1st applicant runs a taxi business whilst the 2nd applicant runs a business selling kerosene and charcoal.
13. The couple own a parcel of land being Nairobi/Block/xx/xxx. They annexed a copy of the Title Deed for this property [Annexure EWK '4']. I am satisfied that the Applicants are financially stable and have the means to provide for the child.



14. The applicants are both Christians and intend to raise the child in the Christian faith. Annexed to the summons is a letter of recommendation dated August 28, 2022 written by Pastor Arthur Mahinga Mwangi of the [Particulars withheld] Church International where the couple worship [Annexure EWK '7'].
15. The applicants were both examined medically and both were found to be mentally and physically fit. They have annexed copies of clearance certificates issued to both by the Directorate of Criminal Investigations proving that neither has a criminal record [Annexure 'EWK 6(a) and EWK 6(b)].
16. The applicants stated that their respective families are aware of and support their intention to adopt the child. They have appointed the 2nd applicants brother and sister-in-law as the legal guardians for the child.
17. The proposed legal Guardians for the child SMK and SW have both signed an affidavit dated March 31, 2023 confirming their willingness to be appointed as legal guardians.
18. All in all I am satisfied that the Applicants are suitable adoptive parents.
19. The subject child is a boy child who is believed to have been born on May 15, 2021 at Nyambogichi Location [Particulars withheld] Village in Laikipia Central Sub-County.
20. On September 20, 2021 the child's mother approached a local farmer seeking help to feed her baby. The farmer offered her food and accommodation for about ten (10) days.
21. On September 29, 2021 the farmer went out to graze his livestock. When he returned to his home he found the baby lying on the bed alone. The mother was nowhere to be seen. He called neighbours and they went to report to the local chief. The abandonment was later reported at the Wiyumiririe Patrol Base vide OB Number xx of September 29, 2021.
22. Thereafter on September 2, 2022 the Nanyuki Children's Court committed the child to Neema House Infant Rescue Centre for Care and Protection. On December 19, 2023 the child was released in to the custody of the applicants under a Foster Care Agreement.
23. Efforts to trace the biological mother of the child have to date borne no fruit. The Children's home sent out fliers in an attempt to trace the child's mother but this was unsuccessful see [Annexure 'EWK 19]. The mother never returned to the home of the good Samaritan to claim her child. A final Police letter dated October 18, 2022, is annexed to the summons (Annexure 'EWK24')
24. 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.”
25. This is a child who was abandoned at the age of about four (4) months in Laikipia Sub-County, Nanyuki County in the Republic of Kenya. The child is presumed to be a citizen of Kenya by birth.
26. 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 lieu with section 187 (1)(a) of the Children Act, 2022.



27. 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].

28. This is a child who was abandoned shortly after his birth. He faced an uncertain future living in various Children’s Homes. This adoption allows the child the opportunity to be raised in a stable and loving home environment.

29. The child has lived with the applicants in their home since December 2022. He has bonded with the applicants and this is the only family the child knows. I was able to see the child on line. He was a healthy cheerful toddler who was at ease playing with the applicants.

30. A Home visit was conducted on June 5, 2023. The applicants reside in a one bed-roomed apartment in Mwiki-Kasarani. The home was found to be secure with adequate facilities for raising a young child. It was found to be a conducive environment for the child.

31. I have perused the reports prepared by the Adoption agency the Guardian Ad litem and the Director Children’s Services. All three reports were positive and all recommend the adoption.

32. Finally, I find that this adoption serves the best interest of the subject child. Accordingly I do allow this application and make the following orders:-

- (1) The applicants PKK and EWK are authorize to adopt the child known as Baby MF.
- (2) Upon adoption the child will be known as JKK.
- (3) The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and privileges thereto.
- (4) The Registrar – General is directed to make the relevant entry in the Adoption entry in the Adopted children’s Register.
- (5) SMK and SWM 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

