



**In re MR (Baby) (Adoption Cause E006 of 2022)
[2023] KEHC 27281 (KLR) (1 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 27281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
ADOPTION CAUSE E006 OF 2022
SN MUTUKU, J
AUGUST 1, 2023
IN THE MATTER OF THE CHILDRENS ACT (ACT NO. 29 OF 2022)
AND
IN THE MATTER OF BABY MARY ROSE
AND IN THE MATTER OF AN APPLICATION FOR ADOPTION
BY
EN.....THE APPLICANT**

JUDGMENT

1. EN, the Applicant in these adoption proceedings, filed on 21st October 2022, an Originating Summons dated 22nd July, 2022 brought under sections 2,3,7,8,11,12,17,31,185,186,187,188(4),193,200,201 and 211 of the *Children Act*, section 24 of the *Interpretation and General Provisions Act*, section 9 of the *Citizenship and Immigration Act*, Article 53 of the *Constitution* of Kenya.
2. The applicant is seeking the following orders:
 - i. That the Applicant EN be allowed to adopt the child currently identified as Baby MR.
 - ii. That MLM be appointed as Legal Guardian of the child, in the event that the Applicant herein is incapacitated or in any way unable to discharge her parental obligations.
 - iii. That the Guardian *Ad Litem* be discharged.
 - iv. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register.
 - v. That this court do issue such further orders as are in the interest of justice.
3. In support of the Originating Summons, the Applicant has filed a statement dated 22nd July 2022, together with an affidavit.



4. I have read all the documents filed in this adoption cause and I have noted that Baby MR was found abandoned on 24th September 2017 in Masimba town, Makueni County. She was rescued by a good Samaritan and taken to Masimba Police Post. This report was booked under OB No 17/25/9/2017. The child was placed under the care of Makindu sub-county Children's officer and consequently at Blessed Peace Foundation for temporary care and protection.
5. Through a court order from the Principal Magistrate at Makindu Law Courts, the child was committed to Mahali Pa Maisha Infant Rescue Centre on 2nd October 2017 for a period of 3 years. The matter was investigated by the police with the result that no one came forth to claim the child. The police issued their final letter dated 16th April 2018, to that effect. The child was declared free for adoption on 14th June 2018 by the case committee of the Buckner Kenya Adoption Services through Certificate No 0281 dated 4th June 2018.
6. This court appointed Winny Khisa on 30th January 2023 as Guardian *Ad Litem*. The court further commissioned reports from the Guardian *Ad Litem* and the Director of Children Services. The Report by the Guardian *Ad Litem* is dated 21st March 2023 and was filed on 28th March 2023 while that of the Director of Children Services is dated 23rd March, 2023 and filed on 27th March 2023.
7. I have read both reports. I have noted that the Applicant is a Kenyan citizen aged 35 years. She is a single mother with one biological daughter. She is a Christian. She is desirous of adopting the child so as to provide her with a family and change her life for the better. She is in a position to provide for the child. She is a Social Worker by profession. She works at Mahali Pa Maisha Child Rescue Centre.
8. The reports show that the Applicant is both physically and emotionally fit to adopt and care for the child. In her averments, she has stated that she is capable of meeting the child's health needs. The Guardian *Ad Litem* and the Director of Children Services have recommended that the Applicant be allowed to adopt the child. The records in the court file show that she has a clean criminal record as she has never been convicted of any offence as shown in the certificate of good conduct dated 9th September 2020 issued by the police.
9. The Applicant has proposed MLM as the Legal Guardian. MLM is a close friend of the Applicant. She is fit, able and willing to act in the capacity of legal guardian. She has also consented to be so appointed through her letter of consent dated 6th December 2021.
10. I have considered the applicable law in respect to adoption. Section 185(1)(2) of the [Children Act](#) (No 29 of 2022) provides that: -
 1. Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.
 2. Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless—
 - (a) the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filing of the application; and
 - (b) the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.



11. From the records in the court file, the Applicant has had continuous care and control of the child for a period of three consecutive months preceding the filing of their application. The child was placed with the Applicant on 22nd December 2021 and has been under her care and protection ever since.
12. The Applicant is aged 35 years thereby complying with the age requirement under the law.
13. I have ascertained from the record that no one claimed the child from the time she was rescued to the time she was placed under the care of the Applicant. This has been confirmed through the final letter from Makindu police station dated 16th April, 2018 confirming that nobody had claimed the child. I have also noted that the child was declared free for adoption vide a certificate dated 14th June, 2018 issued by Buckner Kenya Adoption Services.
14. This court therefore dispenses with the consent contemplated under section 187 of the *Children Act*. For emphasis, this section provides as follows:
 - (1) The Court may dispense with any consent required under section 186(8) paragraphs (a), (b) and (c) if the Court is satisfied that—
 - (a) in the case of the parent or guardian of the child, the parent or guardian has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child;
 - (2) Without prejudice to the generality of subsection (1)(a) –
 - (a) abandonment shall be presumed in any case where the child appears to have been abandoned at birth, or if the person or, where the institution having care and possession of the child, that institution has lost all contact with a parent or guardian of the child for a period exceeding one year; and
15. In the case of *Re TP(Child)* [2021] eKLR the court held under [par. 14] that

“From the record and material presented before this court, the minor was abandoned by her mother. Although it was not very clear on the specific effort made to trace the mother who delivered the child, police department confirmed through their initial and final letter dated 14th October, 2016 that the mother could not be found. Consequently, the need for consent pursuant to section 159 of the *Children Act* is dispensed with.”
16. Article 53(2) of the *Constitution* commands this court to consider the best interest of the child in all matters and decisions affecting the child. The same requirement is found under section 4(2) and (3) of the Children’s Act and Article 3 of the *UN Convention on the Rights of the Child (CRC)*, which Kenya ratified on 30 July 1990. This provisions states that: -
 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
17. I have considered that the minor was abandoned. That the police investigated the whereabouts of the relatives of the child without success. The child has lived with the Applicant in a conducive environment where all her needs have been taken care of. The Applicant is earning a living and is in



a position to provided for the child. The reports are favourable. I have taken into consideration these circumstances; it is my view that the best interest of this child would be met if this court allows the Applicant to adopt her. For this reason, I hereby grant an adoption order in the following terms:

- i. That the Applicant EN is hereby allowed to adopt Baby MR.
- ii. That the child shall be known as MWN.
- iii. That MLM is hereby appointed as Legal Guardian of MWN in the event that the Applicant herein is incapacitated or in any way unable to discharge her parental obligations.
- iv. That Winny Khisa, the Guardian *Ad Litem*, is hereby discharged.
- v. That the Registrar General is hereby directed to make the appropriate entries in the Adopted Children's Register.

18. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 1ST DAY OF AUGUST 2023.

S. N. MUTUKU

JUDGE

