



**In re EK (Baby) (Adoption Cause E237 of 2022)  
[2023] KEHC 24880 (KLR) (Family) (6 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24880 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E237 OF 2022**

**PM NYAUNDI, J**

**OCTOBER 6, 2023**

**IN THE MATTER OF ADOPTION OF ABANDONED BABY EK ALIAS BABY E ALIAS E**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION**

**IN THE MATTER OF**

**PMM ..... 1<sup>ST</sup> APPLICANT**

**CNM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The Applicants, PMM and CNM vide Originating Summons dated 24th November 2022 have made an application for the adoption of Abandoned Baby EK alias Baby E alias E the child herein. The applicants have been married since July 7, 1990 and have attached a copy of marriage certificate serial number 69xxx2.
2. They wish to adopt the child with the desire to grow their family having been married for over 30 years they have been blessed with one biological child SNM. They also want to give back to the community because they have the financial and emotional capacity to do so. In addition, as Christians they want to give a home and love to a needy child.
3. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the 28th of September 2023.
4. The Applicants are Kenyan Citizens and of the Christian faith. They aver that they have the financial means and capability to take care of the Child. The 1<sup>st</sup> applicant is a farmer, the 2<sup>nd</sup> applicant works as Regional business officer at Bible Society of Kenya. They have had custody of the child since August



- 8, 2017. They reside in Nyayo Estate in Embakasi. They fully understand the consequences of an adoption order.
5. The child is of a male sex born on or about April 17, 2015 was found abandoned in ward 3B of Kenyatta National Hospital. The matter was reported and recorded as OB No xx/21/04/2015. Kenyatta National Hospital sought temporary placement for the child at Happy Life Children's Home.
  6. The child was presented before the Nairobi Children's Court at Nairobi and was formally committed to Happy Life Children Home in P& C Number 217/8 of 2015 for a period of 3 years. Kenyatta Police Post has since confirmed that no one has come forth to claim the child.
  7. Prior to the hearing of the adoption application, KKPI Adoption Society issued a certificate serial No. xxx declaring the child free for adoption. On January 20, 2023 the Court appointed a Guardian Ad litem DK.
  8. The Guardian Ad Litem, DK was present in Court and presented her report dated March 23, 2023. She confirmed that he visited the Applicants and the Child at their home and observed that they have bonded well, and the child is well taken care of. He has also bonded well with the sister. She recommends that the Applicants be allowed to adopt the Baby.
  9. Department of Children Services, Mary Atati prepared a report dated 7th March 2023, and counter signed by Nancy Waswa. The report established that the child of a male sex born on or about April 17, 2015 was found abandoned in ward 3B of Kenyatta National Hospital. The matter was reported and recorded as OB NO xx/21/04/2015. Kenyatta National Hospital sought temporary placement for the child at Happy Life Children's Home.
  10. The Report further documents that The child was presented before the Nairobi Children's Court at Nairobi and was formally committed to Happy Life Children Home in P& C Number 217/8 of 2015 for a period of 3 years. Kenyatta Police Post has since confirmed that no one has come forth to claim the child.
  11. The minor, DMO was present in Court and the Court interviewed him. He is 8 years old. He recognises the Applicants as his parents. He appeared happy, settled and at ease with the parents.
  12. The proposed Legal Guardians JM and SOO attended court and confirmed they are willing to take up the role of legal guardian. They are the 1<sup>st</sup> Applicant's brother and sister in law.
  13. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the *Children Act*, 2022 provides.
    - (1) The Court may make an adoption order on application by—
      - a. A sole applicant; or
      - b. Two spouse jointly
    - (2) The Court shall not make an adoption order in any case unless—
      - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
      - (b) The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.



3. The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
14. The Applicants are aged 59 years and 59 years respectively.
15. Article 53 of *the Constitution* of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child's Best interests are of paramount importance in every matter concerning the child

16. This principle is restated Under Section 8 of the *Children Act*, 2022 which provides

Best interests of the child.

(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;
- (b) The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

Section 194 (1) (c) of the *Act* also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;

17. In view of the foregoing, the court is of the considered view that it is in the child's best interest to be adopted by the Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated November 24, 2022 and order as follows:

- i. The Applicants PMM and CNM be allowed to adopt Abandoned Baby EK Alias Baby E alias E.
- ii. The Child to be known as DOM.
- iii. The Child be presumed to be a Kenyan citizen by birth and the date of birth is 17<sup>th</sup> April 2015 at Kenyatta Hospital.
- iv. JM and SOO are hereby appointed as legal guardians of Child
- v. The Registrar is hereby directed to enter this adoption into the Register of Adopted Children.
- vi. The Director Immigration is authorized to issue the child with a Kenyan passport
- vii. The Guardian Ad litem is discharged.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 6<sup>th</sup> DAY OF October 2023.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of;

Sylvia Court Assistant

