



**In re PK (Baby) (Adoption Cause E202 of 2022)  
[2023] KEHC 24881 (KLR) (Family) (2 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24881 (KLR)

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

**ADOPTION CAUSE E202 OF 2022**

**PM NYAUNDI, J**

**OCTOBER 2, 2023**

**IN THE MATTER OF THE CHILDREN’S ACT NO. 8 OF 2001**

**IN THE MATTER OF ADOPTION OF BABY PK ALIAS  
ABANDONED FEMALE BABY ALIAS ABANDONED BABY**

**AND**

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

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. The Applicants, EMR and PMN vide Originating Summons dated 9th November 2022 have made an application for the adoption of Baby PK alias Abandoned Female Baby alias Abandoned Baby the child herein. The applicants have been married since August 2010 and have attached a copy of the marriage affidavit. They have one biological child, MN who is 12 years old. They wish to adopt the baby with the intention to provide for a child a family to belong to and also they wanted a company and sibling for their biological daughter.
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the 27th of July 2023.
3. 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 graphic designer and 2<sup>nd</sup> applicant is an accountant at [particulars withheld], they have had custody of the child since 14<sup>th</sup> March 2021. They reside in Kitengela. They fully understand the consequences of an adoption order.



4. The child was found abandoned on 3<sup>rd</sup> July 2020 in a shamba plantation at Kianjai area, in Meru County by a good Samaritan who then reported the matter to Ngundune Police Station, Kianjai where it was recorded as OB Numbers [particulars withheld] and [particulars withheld].
5. The child was then taken to Meru Teaching and Referral hospital by the police officers for medical observation. Meru sub-County Children Office sought temporary placement for the child at Neema House Infant Rescue Centre.
6. Subsequently, the child was presented before the Children’s court at Meru which formally committed her to Neema House Infant Rescue Center in C & P Case No. E004 of 2020. Ngundune Police Station, Kianjai has since confirmed, that no one has come forth to claim the child. On 28<sup>th</sup> January 2022, Ngundune Police Station confirmed that no one had claimed the child since she was reported abandoned and a final letter was given.
7. Prior to the hearing of the adoption application, Change Trust Adoption Society prepared and filed a report dated 19<sup>th</sup> February 2021 and issued a certificate serial No. [particulars withheld] declaring the child free for adoption. The Court appointed a Guardian Ad litem VKW.
8. The Guardian Ad Litem, VKW was present in Court and presented her report dated 16th February 2023. She confirmed that she visited the Applicants and the Child at their home and observed that they have bonded well, and the child is well taken care of. She recommends that the Applicants be allowed to adopt the Baby.
9. An officer of the Department of Children Services, Carolyne Olilo prepared a report dated 14th June 2023 and countersigned by Nancy Waswa. The report established that The child was found abandoned on 3<sup>rd</sup> July 2020 in a shamba plantation at Kianjai area, in Meru County by a good Samaritan who then reported the matter to Ngundune Police Station, Kianjai where it was recorded as OB Numbers [particulars withheld] and [particulars withheld] .
10. The Report further documents that child was then taken to Meru Teaching and Referral hospital by the police officers for medical observation. Meru sub-County Children Office sought temporary placement for the child at Neema House Infant Rescue Centre. The court committed her to Neema House Infant Rescue Center in C & P Case No. E004 of 2020.
11. The proposed Legal Guardian MIWN attended court and confirmed she is willing to take up the role of legal guardian. She is younger sister to 2<sup>nd</sup> applicant.
12. 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 persons 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.
13. The Applicants are aged 52 years and 49 1/2 years respectively.
14. 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

15. 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;

16. 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 9<sup>th</sup> November 2022 and order as follows:
- I. The Applicants EMR and PMN be allowed to adopt Baby PK alias Abandoned Female Baby alias Abandoned Baby.
- II. The Child to be known as PWM.
- III. The Child be presumed to be a Kenyan citizen by birth.
- V. The child's date of birth is 1st July 2020 at Meru.
- V. MIWN is hereby appointed as legal guardian of the Child
- VI. The Registrar is hereby directed to enter this adoption into the Register of Adopted Children.
- VII. The Director of Immigration authorised to issue the child with a Kenyan passport
- VIII. The Guardian Ad litem is discharged.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 2<sup>nd</sup> DAY OF OCTOBER, 2023.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

**In the presence of:**

Holding brief for Ms Kiguatha for the Applicant

Sylvia Court Assistant

