



**In re Adoption for Baby TS (Minor) (Adoption Cause E142 of 2024)  
[2024] KEHC 13903 (KLR) (Family) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13903 (KLR)

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

**ADOPTION CAUSE E142 OF 2024**

**BK NJOROGE, J**

**NOVEMBER 7, 2024**

**IN THE MATTER OF THE CHILDREN ACT (ACT NO. 29 OF 2022)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY TS (MINOR)**

**AND**

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

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. This Judgment is in respect of an Adoption application by the Joint Applicants. It is by way of an Originating Summons dated 21<sup>st</sup> June, 2024. The Joint Applicants seek for the following orders.
  - a. That the Applicants be authorised to adopt the child: Baby TS who is a Kenyan Citizen, presumably born on the 12<sup>th</sup> December, 2022.
  - b. That upon adoption, the child be known as TEM.
  - c. That CMK & JWM of Kenyan National Identity Card Number 112XXX99 & 136XXX17 be appointed as legal guardian of the Child Baby TS.
  - d. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate



2. The Originating Summons is presented to Court pursuant to Sections 186, 187, 188, 194, 195 and 200 of the *Children Act (Act No. 29 of 2022)* and Section 1A, 1B & 3A of the *Civil Procedure Act of the Interpretation and General Provisions Act*, (Chapter 2 of the Laws of Kenya), Section 9 of the Citizenship and Immigration Act, 2011, Article 53 of the *Constitution* of Kenya and all other enabling provisions of the law.
3. The Joint Applicants are Kenyan Citizens. They were married on 21<sup>st</sup> July, 2017 at the Grace Ind. Baptist in Dagoretti in Nairobi. They are in a monogamous relationship. The 1<sup>st</sup> Applicant is 37 years. The 2<sup>nd</sup> Applicant is 38 years old. The 1<sup>st</sup> Applicant is a Project Manager with [particulars withheld] Ltd. The 2<sup>nd</sup> Applicant is a Teacher with [particulars withheld] School. They both profess the Christian faith. They intend to raise the child as a Christian based on their faith and values.
4. The Applicants do not have any biological children.
5. A Guardian Ad Litem's Report dated 19<sup>th</sup> July, 2024 has been filed. This is pursuant to Section 188 (2) (b) of the *Children Act* cap 141 of the Laws of Kenya. The Guardian was approved vide an order made on 11<sup>th</sup> July, 2024 before the Court.
6. The Director of Children's Services has also filed a report dated 22<sup>nd</sup> July, 2024.
7. The Joint Applicants appeared in Court virtually on 25<sup>th</sup> July, 2024. They were together with the child the subject of these proceedings. He is one and a half years old. The Court was able to watch the close family bond that they have formed with the child the subject of this adoption. The Court listened to their evidence and their motivation to get and raise a child of their own, by way of adoption. They wish to extend their love to a child as well as expand their family. They are willing to share their resources with another person. They are ready to provide a home to the child. It is expected that the child the subject matter of these proceedings, will now grow up in a stable and loving home. The Joint Applicants have the necessary financial resources to take care of the child. The Court has no doubt as to their motivation to adopt. An adoption will benefit the child and will be for his best interests.
8. The Court has also heard Pauline Mumo Kitema virtually on 25<sup>th</sup> July, 2024. She appeared in Court as a representative of the Kenya Children's Home Adoption Society, an Adoption Agency. She confirmed that the case committee of the Adoption Society in its sitting of 18<sup>th</sup> October, 2023 declared the child free for Adoption. A Certificate Declaring a Child Free for Adoption No. 923 was issued on 18<sup>th</sup> October, 2023. The Certificate is a mandatory requirement of the law as per Section 184 (1) (b) of the *Children Act* cap 141 of the Laws of Kenya.
9. The Court has noted the Reports filed by the Guardian Ad Litem and the Director of Children Services. They are filed without any reservations to the adoption process.
10. The Joint Applicants have also made provisions for the appointment of the Child's Legal Guardians. This is in the case of unforeseen circumstances or their incapacity. They have proposed CMK & JWM who are a husband and wife and close family friends to the Joint Applicants. The proposed Legal Guardians also appeared before the Court virtually. They confirmed their consent to the appointment as legal guardians. The proposal for appointment of Legal Guardians is in line with Section 195 of the *Children Act* cap 141 of the Laws of Kenya. Equally this proposal serves in the best interests of the child.
11. The Court has noted that the child the subject matter of this adoption was found abandoned near [particulars withheld] Primary School. This was on 17<sup>th</sup> December, 2022. He is presumed to have been born on 12<sup>th</sup> December, 2022. The Court has seen the age assessment form dated 19<sup>th</sup> December, 2022. The child was found abandoned near the school by a good Samaritan named AN. She involved the police. A report was made to Githurai Kimbo Police Station vide OB NO. 14/17/12/2022. The



child's parents could not be traced. He was estimated to be 7 days old. His estimated date of birth was given as 12<sup>th</sup> December, 2022. He is therefore presumed to have been born in Githurai Kimbo area in the County of Kiambu. The Baby was referred to Githurai Langata Health Centre for medical examination. Thereafter the Police referred the child to New Life Home Trust which is a children's home. The baby was formally committed into the New Life Home Trust through the Children's Court At Ruiru in C&P Case No. E023 OF 2023 on 1<sup>st</sup> August, 2023. The Court has seen the final letter from Githurai Kimbo Police Station dated 13<sup>th</sup> May, 2023. It confirms that no one has come back to reclaim the child. In the circumstances, the Court is satisfied that the child was found abandoned and the natural parent(s) cannot be found. The consent of the natural parents as required by Section 187 (1) of the Children Act cap 141 of the laws of Kenya is dispensed with, pursuant to Section 186 (8) (a) of the Children Act cap 141 of the laws of Kenya.

12. The Joint Applicants received the child into the care on 22<sup>nd</sup> December, 2022. The Court has seen the foster care agreement dated 22<sup>nd</sup> December, 2022 with New Life Home Trust.
13. The Joint Applicants do not have any criminal records. They have obtained Certificates of Good Conduct No. PCC-9QT2L983 dated 24<sup>th</sup> August, 2022 and PCC- MOTJWKM9 dated 22<sup>nd</sup> November, 2022 respectively.
14. The Child was found abandoned on 17<sup>th</sup> December, 2022. The initial Police report confirms this date. His assessed date of birth is given as 12<sup>th</sup> December, 2022. It is only just and proper that the date of 12<sup>th</sup> December, 2023 be maintained as the birth date of the child. This will henceforth be his birth date in absence of a birth notification card, or any other birth records. His place of birth will be Kiambu County.
15. There is also issue of the child's nationality. The child was found abandoned at Githurai Kimbo area in Githurai area of Kiambu County, in the the Republic of Kenya. Article No 14 (4) of the Constitution of Kenya states as follows;
  - “(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.”
16. The Child has a right to Citizenship. The Constitution confers the right of Kenya Citizenship, to a child found abandoned within the Kenyan territory.
17. The Court has considered the application before it in its entirety.
18. The Court has also heard all the parties who appeared before it. All the Reports filed and presented support the adoption.
19. The Court finds that it is in the best interests of the child that he gets a stable home where he will be loved, nurtured and allowed to grow to his full potential. In turn he will contribute to the growth of this great Nation as a great citizen of this Country.
20. The Court notes that the Joint Applicants have a strong desire to provide a home to the child. They wish to expand their family. They do, not have any children of their own. They have demonstrated a strong desire to adopt this child.
21. The child is one and a half years old hence not legally required to give his consent. To the Court, he appeared well taken care of. The reports filed do not reveal any adverse information or reservations. The Joint Applicants appear to be a mature young couple that should be able to navigate through highs and the lows of life with a new child in their life. The Court is minded to allow the application.



22. The Child has no birth certificate so it is only fair that he be issued with a birth certificate, post adoption. The birth certificate will reflect the Joint Applicants as the parents. This will reduce the incidences of stigmatisation and discrimination.

Determination

23. The Court grants the prayers sought the Originating Summons dated 21<sup>st</sup> June, 2024 in the following terms;
- a. That the Applicants be authorised to adopt the child: Baby TS who is a Kenyan Citizen, presumably born on the 12th December, 2022.
  - b. That upon adoption, the child be known as TEM.
  - c. That CMK & JWM of Kenyan National Identity Card Number 112XXX99 & 136XXX17 be appointed as legal guardian of the Child Baby TS.
  - d. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate
  - e. That the Registrar of Births and Deaths or the relevant Government department do issue the Joint Applicants with a post adoption birth certificate for the child.
  - f. That the Guardian Ad Litem is hereby discharged.
24. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**NJOROGE BENJAMIN. K**

**JUDGE**

**In the presence of: -**

..... for the Applicants

Court Assistant: .....

