



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Adoption of Baby RH, Baby RH alias unknown Male Child (Adoption Cause E004 of 2024) [2024] KEHC 15535 (KLR) (6 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15535 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
ADOPTION CAUSE E004 OF 2024  
MA ODERO, J  
DECEMBER 6, 2024  
IN THE MATTER OF ADOPTION OF  
BABY RH**

**IN THE MATTER OF**

**CHARLES NJUIRI MURIUKI ..... 1<sup>ST</sup> APPLICANT**

**LYDIA NYAWIRA NJUIRI ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is the Ex-parte Originating Summons dated 11<sup>th</sup> April 2024 by which the Applicants CNM and LNN seek the following orders:-
  1. That the Applicants CNM and LNN be allowed to adopt the child currently identified as Baby RH.
  2. That henceforth, the child be renamed as JNN.
  3. That the child's date and place of birth be declared to be 21<sup>st</sup> August 2021 at Nairobi County.
  4. That the child be presumed to be a Kenyan Citizen by birth and consequently, be entitled to all the rights and benefits in respect therefor.
  5. That James Wanjohi and DW be appointed as Legal Guardians of the child in the event That the Applicants herein are incapacitated or in any way unable to discharge their parental obligations.
  6. That the guardian ad litem be discharged.
  7. That the Registrar General be directed to make the appropriate entries in the Adopted childrens Register.



8. That this court do issue such further orders as are in the interest of justice.”
2. The Summons was supported by the statement of even date sworn by the two applicants. The matter proceeded by way of Vive Voce evidence on the virtual platform.
3. The Applicants are a couple who got married to each other on 5<sup>th</sup> November 2011. Their union has not been blessed with any issue due to medical complications. The couple have decided to adopt a child in order to complete their family.
4. The Applicants both confirmed That they do understand the legal implications of an adoption order. They undertook to accord to the subject child all rights and privileges due to a biological child including the right to inherit.

### **Analyis and Determination**

5. I have considered this application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for adoption are set out in Section 184 (1) (a) and (b) of the *Childrens Act* 2022 as follows:-
  - (1) A person shall not commence any arrangement for the adoption of a child unless:-
    - a. The council, in accordance with the rules, has declared the child:-
    - b. The council, in accordance with the rules, has declared the child free for adoption.
    - c. 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 21<sup>st</sup> August 2021. The child is therefore now aged three (3) years and is above the six (6) week age limit provided for in law.
8. Buckner Kenya Adoption Services which is a registered adoption agency have annexed to their report dated 17<sup>th</sup> January 2024 an original copy of their Certificate Serial No. 00642 declaring the child Free for Adoption. Accordingly I am satisfied That all the legal prerequisite 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. Copies of their National Identity Cards appear as Annexure CM4A and B to their statement in support of the Summons.
10. The Applicants are couple who got married to each other on 5<sup>th</sup> November 2011. A copy of their Marriage Certificate Serial Number 721916 appears at Page 32 as Annexure CM ‘6’.
11. The couple have no biological children of their own hence the desire to adopt a child in order to complete their family.
12. Both Applicants are engaged in gainful employment. The 1<sup>st</sup> Applicant is a farmer engaging in mixed farming whilst the 2<sup>nd</sup> Applicant is a Pastor/Evangelist at PCEA[Particulars withheld] Parish. They have annexed copies of their financial documents as proof That they have the capacity to provide for the needs of the child (Annexure CM8A & 8B) and CM9A and 9B).



13. The Applicants are both Christians and they intend to raise the child in the Christian faith. Annexure CM5 is a letter of reference dated 6<sup>th</sup> July 2022 written by Reverend Jane Wachira of PCEA [Particulars withheld] Parish.
14. The Applicants are also law abiding citizens. They have annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations (Annexures CM11A and 11B).
15. The Applicants have also annexed copies of their medical reports (Annexures CM10A & 10B) to prove That they are physically and mentally fit. The Applicants told the court That their extended families are aware of and support their intention to adopt the subject child. They have appointed the 2<sup>nd</sup> Applicants sister and brother in-law as the legal Guardians for the child.
16. The proposed legal guardians JGW and DW have both sworn an Affidavit dated 28<sup>th</sup> March 2024 confirming their consent and willingness to step in as legal guardians for the child in the event the Applicants are unable or unavailable to care for the child (see Annexure CM14 A).
17. Based on the material presented to this court I am satisfied That the Applicants are suitable adoptive parents.
18. The subject child is a boy child who is believed to have been born on 21<sup>st</sup> August 2021. The child was abandoned at the Mama Lucy Kibaki Hospital on 21<sup>st</sup> September 2021. Based on his estimated age at the time of abandonment the child was issued with a Birth Notification Serial No. 2528707 indicating That he was born on 21<sup>st</sup> August 2021.
19. The abandonment was reported at Soweto Police Station vide OB Number 34 of 21<sup>st</sup> September 2021. Thereafter on 30<sup>th</sup> November 2022, the Nairobi Childrens Court committed the child to Hope House Babies Home for care and protection. On 7<sup>th</sup> February 2023 the child was placed into the custody of the Applicants under a Foster Care Agreement.
20. 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.”
21. The subject child was found abandoned in Nairobi County within the Republic of Kenya. Efforts by police to trace the biological mother/relatives of the child have borne no fruit. To date no person has come forward to claim the child. A final police letter dated 27<sup>th</sup> October 2022 (Annexure ‘CM 25 B’) is annexed to the summons. I therefore declare the child to be a citizen of Kenya by birth.
22. Given the fact of his abandonment, there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances I waive the requirement of consent for this adoption in line with section 187 (1) (a) of the Children Act 2022.
23. In deciding upon any matter involving a child, courts are obliged to give priority the ‘best interests’ of the said child. Section 8 (1) of the Children Act 2022 provides That:-
  - (8) (1) In all actions concerning, 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 priority consideration” [own emphasis]
24. This is a child who was abandoned about one (1) month after his birth. He faced an uncertain future living in childrens Homes/Institutions. This adoption provides the child with the opportunity to be raised in a loving and stable home environment.



25. The child has lived with the Applicants for over one (1) year. He has bonded with the couple and views them as his parents. I was able to see the child online. He was a healthy, happy and boisterous baby. The child was clearly at ease in the company of the Applicants.
26. A Home visit was conducted by the childrens Department. The Applicants live in a rental unit in[Particulars withheld] Town behind[Particulars withheld] Police Station. The home was found to be suitable to raise a young child.
27. I have considered the reports prepared by the Adoption Agency the Guardian Ad litem and the Director Childrens Services. All three reports were positive and all recommended the adoption.
28. Finally I am satisfied That this adoption does serve the interests of the subject child. Accordingly I allow this application and make the following orders:-
  1. The Applicants CNM and LNN are authorized to adopt the child known as unknown Baby Boy alias Baby RH.
  2. Upon adoption the child will be known as JNN.
  3. The child is presumed to be a citizen of Kenya and is entitled to all rights and benefits in respect thereto.
  4. JGW and DW are appointed as the legal Guardians of the child.
  5. The Registrar General is directed to make the relevant entry in the Adopted Childrens Register.
  6. No orders on costs.”

**DATED IN NYERI THIS 6<sup>TH</sup> DAY OF DECEMBER 2024.**

**MAUREEN A. ODERO**

**JUDGE**

