



**In re MJ aka MJ (Minor) (Adoption Cause E014 of 2023)  
[2024] KEHC 15309 (KLR) (2 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15309 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
ADOPTION CAUSE E014 OF 2023  
PN GICHOHI, J  
DECEMBER 2, 2024  
IN THE MATTER OF BABY MJ AKA MJ (MINOR)**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. The Applicants have moved this Court by way of an Originating Summons dated 12<sup>th</sup> October 2023 seeking orders: -
  1. That the Applicants be authorised to adopt BabyMJ, a minor who is to be known as KKA and the Registrar General be directed to enter the adoption into Register of Adoptions.
  2. That DMA be appointed as the legal guardian of the child.
  3. That the child be presumed to be born in Kenya.
2. This application is based on the ground that the Applicants have met the legal prerequisites set out for adopting a child and have sufficiently bonded with the child. In support is the joint Statement by both Applicants dated 5<sup>th</sup> October 2023 further supported by their joint affidavit sworn on the same day.
3. The gist of the application, as discerned from the pleadings and annexures thereto, is that the Applicants who are both Engineers by profession had been living together since January 2001 before they got married under customary law in 2004. They formalised that marriage under the Marriage Act 2014 and were duly issued with a Certificate of Marriage No. 485884 showing the date of marriage 3<sup>rd</sup> February 2022 and their marital status being customary.
4. In their statement which they adopted as evidence together all the documents filed herein as exhibits in support, the Applicants told this Court that they have another child and wish to adopt the subject herein and enlarge their family.



5. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants testified that they went through the whole process towards this adoption and prayed that the Court does allow them to adopt the subject as prayed and that the subject adopts the name stated therein.
6. In his testimony, Alex Malala who is a Social Worker at the Kenya Adoption Services stated that he prepared a report declaring the subject as free for adoption. He urged the Court to allow the application herein.
7. In his capacity as the in charge of Naivasha Sub County Children's Office, Mr. Chege testified that he interviewed the Applicants herein and visited their home too. He found the Applicants suitable to adopt the subject. He prepared and filed the report to that effect.
8. On her part, GN testified that she was duly appointed as guardian ad litem and filed a report recommending that the two Applicants be allowed to adopt the subject.
9. In her testimony, DM testified that she is a sister to the 1<sup>st</sup> Applicant and a sister in law to the 2<sup>nd</sup> Applicant. She confirmed having freely signed the consent dated 11<sup>th</sup> October 2023. She understands her role in this adoption.

### **Determination**

10. This Court has considered the application, the evidence adduced herein by the witnesses herein and the exhibits annexed. It is evident that the Applicants did not sire any child of their own for medical reasons. The child they referred to and with whom they came to Court during the hearing of this application is a male whom they got through adoption process.
11. They also came with the subject of this application herein. It is a girl. She was born and abandoned in a field at Ole Kasasi area on 3<sup>rd</sup> October 2021 where the good Samaritan one GW rescued her and notified the Police at Ongata Rongai Police Station. The report was booked vide OB No. 5/04/10/2021.
12. The subject was taken for treatment at Nairobi Women's Hospital where she was admitted. She was discharged at age 22 days. Subsequently, Ngong Children's Magistrate's Court committed her to International Treasure House Rescue Centre as a child in need of care and protection.
13. It is then on 17<sup>th</sup> April 2023 and through application by the Children Officer Kajiado, the Children's Court at Ngong revoked the earlier order for committal to International Treasure House Rescue Centre and the subject was placed at Mahali Pa Maisha Rescue Centre to facilitate adoption process as all that time, no one came to claim the subject. The subject was then placed in custody of the Applicants.
14. Regarding the age of the Applicants and the subject, Section 186 (2) of the Children's Act 2022 provides that: -

“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.”



15. The material before Court shows that the 1<sup>st</sup> and 2<sup>nd</sup> Applicant were born on 21/10/1974 and 20/11/1978 respectively. The birth certificate No. A8805419 dated 27<sup>th</sup> April 2023 issued to the subject indicates that she was born on 4/10/2021 in Ongata Rongai in Rift Valley Province.
16. Even though the other material indicates that she was rescued on 3/10/2021, the age of the minor and the Applicants fit the age bracket stipulated under the Children's Act.
17. Regarding bonding, it was evident to this Court that the subject herein and the Applicants are very close. That bond was seamless as between the subject and the other child. When this Court talked to him, he boldly referred to the subject as his sister.
18. The interaction he had with the subject in Court revealed a very close relation between a baby girl and her elder brother who was at Grade 2. The Court observed that their interaction with the Applicants was an indicator of a very close bond in that family of four. No doubt, the Applicants have the capacity to cater for that family.
19. The subject has been declared by Buckner Adoption Services as free for adoption. The documentary evidence shows that the Applicants have followed all the steps towards realisation of their desire to adopt this minor. Having followed all due process, they have been found suitable to adopt this child.
20. This Court is therefore satisfied that from evidence herein that the child can be presumed to have been born in Kenya and her best interest would be served by allowing the Applicants to adopt her. Further, the name she acquired through the process highlighted above was MJ as per the birth certificate. That name should be changed to reflect the name desired by the Applicants.
21. In the circumstances, the Court makes the following orders: -
  1. The Applicants herein LMA and JMK be and are hereby authorised to adopt baby MJ.
  2. The child be and is hereby presumed to be born in Kenya.
  3. The child will henceforth be called KKA.
  4. The Registrar- General be and is hereby directed to enter this adoption in the Register of Adoptions.
  5. DMA be and is hereby appointed as the legal guardian of the child herein.
  6. The guardian ad litem Gladys Bosibori Nyanumba be and is hereby discharged.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 2<sup>ND</sup> DAY OF DECEMBER, 2024**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Ms Muhanda for Applicants

Ruto, Court Assistant

