



REPUBLIC OF KENYA



In re JK alias Unknown Abandoned Child alias Abandoned Male Child (Child) (Adoption Cause E001 of 2023) [2025] KEHC 1270 (KLR) (28 February 2025) (Judgment)

Neutral citation: [2025] KEHC 1270 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
ADOPTION CAUSE E001 OF 2023
MA ODERO, J
FEBRUARY 28, 2025**

IN THE MATTER OF

JTK 1ST APPLICANT

EWC 2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 7th September 2023 by which the Applicants JTK And EWC seek the following orders:-

- “1. Spent.
2. Spent.
3. That the Applicant be authorized to adopt JK alias Unknown Abandoned Child alias Abandoned Male Child to be known as JKT.
4. That the child be presumed to be a Kenyan citizen by birth.
5. That the child’s date of birth be 15th December 2017 and the place of birth be Gatanga .
6. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
7. That the Director Immigration be authorized to issue the child with a Kenya Passport.
8. That the 1st Applicants sister JWN and her husband JNG be appointed as the legal guardians of the child in the event of the death or incapacity of the Applicants before the child is of age or independent.



9. That the Court be pleased to make any further orders it deems necessary”
2. The application was supported by the statement dated 4th September 2023 sworn by the Applicants. The matter was canvassed by way of Vive Voce evidence.
3. The Applicants are a couple who got married to each other on 3rd December 2005. Their union did not bear any issue and as such the couple opted for adoption as a means to complete their family and fulfil their desire to have children.
4. The Applicants both stated that they fully understand and accept the legal implications of an adoption order. They undertook to accord to the subject child all rights due to a biological child including the right to inherit.

Analysis 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 free for adoption.
 - b. The child has attained the age of six weeks.”
7. The subject child is believed to have been born on or about 15th December 2017. Therefore he is now aged about seven (7) years old which is well above the six (6) weeks age limit provided for in law.
8. Change Trust which is a registered adoption agency have annexed to their report a copy of their certificate Serial No. 00XXX, dated 21st December 2018 declaring the child Free for Adoption. Accordingly I am satisfied that the legal prerequisites for adoption have been met.
9. The duty of this court is to analyse the evidence on record to determine whether the Applicants are suitable adoptive parents.
10. The Applicants are both Kenya citizens as proved by the annexed copies of their National Identity Cards. (Annexure ‘JET - 9’).
11. As stated earlier the Applicants are a married couple who celebrated their union on 3rd December 2005 at the Joy Celebration Church in Kitale. A copy of their marriage certificate Serial No. XXXX appears as Annexure ‘JET- ‘8’ to the Summons.
12. The 1st Applicant is a graduate teacher employed by the Teachers Service Commission and currently serving at Moi Girls High School in Marsabit County.
13. The 2nd Applicant is a business woman and engages in farming activities at the couples matrimonial home in Kagicha, Othaya Sub-county. She engages in tea, dairy and poultry farming.
14. The couple earn a joint monthly income of approximately Kshs. 100,000 which is sufficient to enable them provide for the needs of the child. The Applicants have annexed copies of Bank Statements for an



- account held at Equity Bank Othaya Branch (Annexture 'JET - '9'). I am satisfied that the Applicants have the financial capacity to care for the subject child.
15. The Applicants are both Christians and intend to raise the child in the Christian faith. They have annexed copies of clearance Certificates issued to each by the Director of Criminal Investigations. (Annextures 'JET - 11')
 16. They have also annexed copies of their medical reports (Annextures 'JET -10') which proved that both Applicants are medically and physically in good health.
 17. The Applicants have appointed the elder sister of the 1st Applicant and her husband as the legal guardians for the child. The proposed legal guardians Jannefer Wairimu Ngari and James Ngari Gateri have signed an Affidavit of consent dated 4th September 2023 confirming their willingness to be appointed as legal guardians (Annexture 'JET 13')
 18. Based on the material before this court I am satisfied that the Applicants are suitable adoptive parents.
 19. The subject child is a boy child who was found abandoned at Mbuguti Shopping Centre Thika, Kiambu County. The child was by then estimated to be 5-7 months old. Two good Samaritans rescued the baby and reported the abandonment at Kirwara Police Station vide OB No.15 of 15th May 2018.
 20. The children's Court in Kandara thereafter committed the child to New Life Home Trust in Nyeri County. On 18th February 2019 the child was released into the custody of the Applicants under a Foster care Agreement.
 21. 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.”
 22. The subject child was found abandoned in Thika Sub-County, Kiambu County within the Republic of Kenya.
 23. Efforts by police to trace the biological mother/relative of the child have borne no fruit. To date no person has come forward to claim the child. A copy of the final police letter dated 11th December, 2018 appears as Annexture 'JET - 4' to the summons. I therefore declare the child to be a citizen of Kenya by birth.
 24. Given the fact of 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 for consent in line with Section 187 (1) of the *Children Act* 2022.
 25. In deciding upon any matter involving a child, courts are obliged to give priority to the 'best interests' of the said child. Section 8(1) of the *Children Act* 2022 provides that:-
 - “(8) (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 priority consideration” [own emphasis]



26. This is a child who was abandoned at 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.
27. I was able to see the child in court. He was a healthy happy and exuberant boy who readily answered all questions put to him. The child has obviously bonded with the Applicants and referred to the 1st Applicant as 'Baba'
28. The Director of Childrens Services Conducted a Home Visit on 15th November 2024. The family reside in their ancestral home in Gikigie Village, Chinga in Othaya. The Applicants own two (2) acres of the family land where they have built a permanent three-bedroomed house. The child has his own room. The house is connected to both electricity and water supply. The family of the 1st Applicant also have their homes on the same piece of land. On the whole the home was found to be conducive for raising a young child.
29. I have perused the reports prepared by the Guardian Ad Litem, the Adoption Agency and the Director Children's Services. All three reports are favourable and all recommends the adoption.
30. Finally I am satisfied that this adoption does serve the best interests of the subject-child. Accordingly I allow this application and make the following orders:-
 - (1) The Applicants JTK and EWC are authorized to adopt the child known as JK alias Unknown Abandoned Child alias Abandoned Male Child.
 - (2) Upon adoption the child will be known as JKT.
 - (3) The child is declared to be a Kenyan citizen by birth and is entitled to all rights and benefits in respect thereto.
 - (4) JWN and JNG are appointed as the joint legal guardians for the child.
 - (5) The Registrar General is directed to make the relevant entry in the Adopted children Register.
 - (6) No order on costs.

DATED IN NYERI THIS 28TH DAY OF FEBRUARY, 2025

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MAUREEN A. ODERO

JUDGE

