



**In re Baby JA (Subject) (Adoption Cause E171 of 2023)
[2024] KEHC 2003 (KLR) (Family) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 2003 (KLR)

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

FAMILY

ADOPTION CAUSE E171 OF 2023

HK CHEMITEI, J

FEBRUARY 29, 2024

IN THE MATTER OF

MNW APPLICANT

JUDGMENT

1. Before this Court is the Originating summons dated 2nd September, 2023. The Applicant MNW is seeking to be authorized to adopt Baby JA hereinafter referred to as the child and upon adoption, the child is to be known as HWW. WWW was appointed as the child's legal guardian upon granting of the adoption orders.
2. The Applicant is a single Kenyan and has never been married. She is employed. Her financial capability and ability to provide for the child is evidenced by her bank statements. Her health status is good as is evidenced by her medical report and she does not have any previous criminal record as is evidenced by her Certificates of Good Conduct issued by the Directorate of Criminal Investigations. She has indicated her desire to adopt the child by virtue of her desire to be a mother. The child has been in their custody since 26th April, 2022.
3. The report from the Ministry of Labour and Social Protection State Department for Social Protection – Department of Children's Services (Nairobi County) dated 4th December, 2023 indicates that the child is female and 1.6 years old. She is Kenyan, whose biological parents are unknown having been abandoned. The child was born at Maragua in Kenya. The child was declared free for adoption on 3rd March, 2023 by KKPI Adoption Society vide freeing certificate number 0620.
4. There is consistent message that there is the urge for MNW to become a mother.
5. The child is a Kenyan citizen by virtue of Article 14 (1) which provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.



6. In light of the best interests of the child principle provided for under Article 53 (2) of *the Constitution* of Kenya, 2010. Sections 8 (1), (2) and (3) of the *Children's Act* No. 29 of 2022 and the 1st Schedule of the Children's Act No. 29 of 2022, this Court has an obligation to prioritize the child's best interests in making decisions touching on her.
- a. Article 53 of *the Constitution*, 2010 states that a child's best interests are of paramount importance in every matter concerning the child.
 - b. Sections 8 (1), (2) and (3) of the *Children's Act* No. 29 of 2022 provides as follows;
 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.
 2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to :-
 - a. safeguard and promote the rights and welfare of the child;
 - b. conserve and promote the welfare of the child; and
 - c. secure for the child such guidance and correction as is necessary for the welfare of the child, and in public interest.
 3. In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.
 - c. The First Schedule as provided for under Section 8 (1) of the *Children's Act* No. 29 of 2022 provides best interests considerations to be as follows:
 1. The age, maturity, stage of development, gender, background and any other relevant characteristics of the child.
 2. Distinct special needs (if any) arising from chronic ailment or disability.
 3. The relationship of the child with the child's parent (s) and/ or guardian (s) and any other persons who may significantly affect the child's welfare.
 4. The preference of the child, if old enough to express a meaningful preference.
 5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.
 6. The stability of any proposed living arrangements for the child.
 7. The motivation of the parties involved and their capacities to give the child love, affection and guidance.
 8. The child's adjustment to the child's present home, school and community.



9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/ or guardian (s), including physical access.
 10. The capacity of each parent and/ or guardian (s) to cooperate or to learn to cooperate in child care.
 11. Methods for assisting parental and/ or guardian cooperation and resolving disputes and each parent's/ guardian's willingness to use those methods.
 12. The effect of the child if one parent/ guardian has sole authority over the child's upbringing.
 13. The existence of domestic abuse between the parents/ guardian (s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
 14. The existence of any history of child abuse by a parent and/ or guardian (s); or anyone residing in the same dwelling as the child.
 15. Where the child is under one year of age, whether the child is being breast - fed.
 16. The existence of a parent's (s) or guardian's (s) conviction for a sex offense or a sexually violent offense under the *Sexual Offences Act*.
 17. Where there is a person residing with a parent or guardian, whether that person; -
 - a. Has been convicted of a crime under this Act, the *Sexual Offences Act*, the Penal Code or any other legislation.
 - b. Has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
 18. Any other factor which may have a direct or indirect effect on the physical and psychological well -being of the child.
7. The report from the Ministry of Labour and Social Protection State Department for Social Protection – Department of Children's Services (Nairobi County), the report from the Buckner Kenya Adoption Services, the guardian ad litem and the proposed legal guardian indicate that the child is well known to the adoptive parents and that she will be well taken care of in their care and custody.
 8. I find that this adoption gives the child a chance at a better life and education in a loving and stable home with the adoptive parent.
 9. In the circumstances, I allow the originating summons dated 2nd September, 2023 and make the following orders:
 - (a) The Applicant MNW is authorized to adopt the child known as JA.
 - (b) Upon adoption, the child shall be known as HWW.
 - (c) The child is declared to be a Kenyan citizen by birth and is entitled to all rights and benefits under *the Constitution* of Kenya, 2010 and all applicable laws.
 - (d) WWW is appointed as legal guardian of the child.



- (e) The Registrar General is directed to make the relevant entries in the Adopted Children's Register in respect of the child.
- (f) The Registrar of births and deaths is directed to issue a birth certificate in respect of the child's new name.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 29TH DAY OF FEBRUARY 2024.

H. K. CHEMITEI

JUDGE

In the presence of:

Ms. Kimenyi for the Applicants.

Ahmed Mohamed – Court Assistant.

