



REPUBLIC OF KENYA



**In re Baby AJ (Adoption Cause E169 of 2023)
[2024] KEHC 5215 (KLR) (Family) (26 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5215 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E169 OF 2023
PM NYAUNDI, J
APRIL 26, 2024
IN THE MATTER OF THE CHILDREN ACT, 2022
AND
IN THE MATTER OF BABY AJ
BY
GMM (1ST APPLICANT) AND VWM (2ND APPLICANT)**

JUDGMENT

1. GMM (the 1st Applicant) and VWM (the 2nd Applicant) seek by their Originating Summons to be allowed by this Court to; -
 - i. Adopt Baby AJ (hereafter “the child”)
 - ii. The child be called QIMM
 - iii. The Child date and place of birth be declared to be 4th April, 2022 in Nairobi County.
 - iv. The Child be presumed to be a Kenyan Citizen by birth.
 - v. The child be entitled to all the rights and benefits in respect thereof, including be issued with a Post-Adoption Certificate of Birth and a Passport, wherever required.
 - vi. VKK and AMM be appointed Legal Guardians of the Child.
 - vii. The Guardian *Ad litem* be discharged.
 - viii. That the Registrar-General be directed to make the appropriate entries in the Adopted Children’s Register.
 - ix. This Court do issue such further orders as are in the interest of justice.



2. The Applicants are husband and wife. They are Kenyan Citizen. They got married under Kikuyu Customary Law in 2008 and later celebrated their marriage on 1st December, 2021 as per attached Marriage Certificate Serial Number [particulars withheld] at the Registrar's Office in Nairobi County.
3. Both Applicants are business people running [Particulars Withheld] Limited. They are blessed with two biological children namely RM born on 25th November, 2008 and AIW, born on 7th November, 2013. The children are aware of the adoption process of the minor herein and have consented to the same.
4. The Applicants desire to adopt this minor so as to offer parental and family care to the minor. It's their statement that every child deserves a home, every child deserves a family where they go back after school, a place they go back even after growing up and having an independent life. A place they call their own and having parents they can call dad and mum as well as having sisters and brothers hence the need to adopt the minor herein. The Applicants are also adopting Baby VZ in Adoption Proceedings Case Number E 168 of 2023.
5. According to the Applicants statement they have informed their biological children on the intention to adopt as well as their immediate family and close friends and they fully consented to the adoption proceedings.
6. Further the Applicants stated that they have applied for the adoption jointly, they further stated that the minor herein bonded well with their biological children, they understand the legal implications of an adoption order and they have the means to provide for the child.
7. The Child herein (Baby AJ) is the subject of the present adoption proceedings is presumed to be 2 years old having been born on 25th December, 2021 as per the Birth Certificate Serial Number [particulars withheld]. The child was found abandoned in on the streets of Kamkunji, Nairobi County where she was about 4 days old and was rescued by well-wishers. The matter was reported at Kamukunji Police Station and was recorded vide OB No. [particulars withheld].
8. On 8th April 2022, the child was referred to Happy Life Children's Home for care and protection. Thereafter, the Resident Magistrate Children's Court sitting at Nairobi in accordance with Section 119 of the *Children Act* 2022, committed the child to Happy Life Children Home on 13th January, 2023 vide Protection and Care No. E585/2022. The child was placed in the custody of the Applicants on 28th February, 2023 for mandatory bonding prior to adoption. The minor has since then been in the continuous custody and care of the Applicants and has since enjoyed the parental love, care and good nurturing accorded to him by the Applicants. According to correspondence from OCS, Kamukunji Police and other authorities no one has come forward to claim the child.
9. Accordingly, [particulars withheld] Adoption Services, issued a certificate declaring the child free for adoption pursuant to Section 156(1) of the *Children Act*. The said freeing certificate is Serial No.0XX2 and is dated 28th February, 2023.
10. In an application filed on 15th August, 2023 the Applicants sought orders that JNW be appointed as the child's guardian ad litem and that he and the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit their report. On 14th December, 2023 this Court issued an order appointing JNW as the child's guardian ad litem and further directed that he and the Director of Children's Services to file their respective reports in Court within 45 days.
11. Pursuant to Section 156(1) of the *Children Act*, Ezekiel Kimani Assistant Director from Children's Services, on 20th February, 2024 prepared and filed in Court a favourable report in respect of the proposed adoption of the child by both Applicants where he stated that the Applicants have bonded



- well with the minor, they have nominated VKK and AMM to be the legal guardians in case of any eventuality.
12. The Legal Guardians have been best friends to the Applicants and have been married for 18 years. The Applicants are capable of taking care of the minor financially hence recommends for the Adoption. Another favourable Report from [particulars withheld] Adoption Services filed on 19th March, 2024 observed that the Applicants have taken care of the child well since placement. The child bonded well with both parents and the siblings. Additionally, all extended families embraced the minor herein and it will be in the best interest of the child to be adopted by the Applicants.
 13. On 23rd March 2024, the guardian ad litem, JN, filed the statutory report made under Section 188 of the Children Act, 2022 in which he observed that the child is in a very loving and protective family, the minor has accepted and bonded very well with the Applicants and their two children who have subsequently given their written consent concerning the adoption of the minor. He recommended the adoption of Baby VZ by the Applicants as it would be in the best interest of the child.
 14. It was also evidence in Court via online platform where the Court observed that the minor recognizes the Applicants as his parents.
 15. The Applicants are of good health and financially capable of taking care of the child. They have no criminal record as evidenced by Police Clearance certificates of the first Applicant and second Applicant of Serial Numbers [particulars withheld] and [particulars withheld] respectively.
 16. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the joint Applicants to adopt the child. This Court has evaluated the facts of this adoption.
 17. This is a Local Adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth. This Court has satisfied itself that the Applicants are qualified and able to take care of the child.
 18. The home visits by the guardian ad litem, the adoption society and the Director of the Children's Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them.
 19. The proposed legal guardians attended Court and confirmed that they have given their consent to act as Legal Guardians.
 20. The child recognizes the Applicants as his parents.

Determination

21. After carefully assessing the records herein, I am satisfied that the Applicants have fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the *Children Act*, 2022 provides. The court may make an adoption order on application by-
 - (1)
 - (a) Sole applicant; or
 - (b) Two spouses jointly.



- (2) The court shall not make an adoption order in any case unless-
- i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - ii. The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
- (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
22. This Court is alive to the jurisdiction of the High Court vide Article 165 *Constitution of Kenya* 2010 and Section 183(1) *Children Act* 2022. The Court is conscious of the law; Article 53 *Constitution of Kenya* 2010, Section 8 of *Children Act* 2022 and the *UN Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child* all amplify on the best interests of the child.
23. The Court has evaluated the facts of this Local Adoption from the Reports filed. It is evident that the Applicants have fulfilled all the legal requirements of a Local Adoption as required under Section 193 of the *Children's Act*, 2022. All the necessary Reports and consents required for this Adoption have been filed.
24. 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.”
25. This Court is therefore of the opinion that this Adoption would be in the best interest of the child and allows the application with ordersthat;
- a. The Applicants, GMM and VWM are hereby allowed to adopt BABY AJ.
 - b. Henceforth, the child shall be known as QIMM.
 - c. Her date of birth shall be 4TH APRIL, 2022 and place of birth Nairobi County.
 - d. She is presumed to be a citizen of Kenya by birth.
 - e. VKK and AMM are hereby appointed as Legal Guardians.
 - f. The Director Immigration be authorised to issue the child with a Kenyan Passport.
 - g. The Registrar General to enter this order in the Adoption Children Register.
 - h. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 26TH DAY OF APRIL, 2024.

NYAUNDI

JUDGE

In the presence of:

Sylvia Court Assistant

Ms. Kimenyi for the Applicants

