



**In re E (Baby) (Adoption Cause E107 of 2023)
[2024] KEHC 4140 (KLR) (Family) (26 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E107 OF 2023
PM NYAUNDI, J
APRIL 26, 2024
IN THE MATTER OF THE CHILDREN ACT, 2022
AND
IN THE MATTER OF BABY E**

IN THE MATTER OF

DLM 1ST APPLICANT

WW 2ND APPLICANT

JUDGMENT

1. DLM (the 1st Applicant) and WW (the 2nd Applicant) seek by their Originating Summons dated 14th June 2023, to be allowed by this Court to;
 - i. Adopt Baby EN (hereafter “the child”)
 - ii. The child be called TML
 - iii. That the Registrar-General be directed to make the appropriate entries in the Adopted Children’s Register.
 - iv. BLM and DAN be appointed Legal Guardians of the Child.
 - v. The Child be presumed to be born in Kenya
2. The Applicants are husband and wife. They are Kenyan Citizens. They celebrated their marriage on 4th December, 2009 as per attached Marriage Certificate Serial Number 152711



3. Both Applicants are business people. The Applicants averred that they have not been blessed with any biological children however, they have another adopted child child, a son, Jabali Anjambi Lumula born on 16th March, 2015.
4. The Applicants desire to adopt this minor is driven by the fact that they love children, they want to expand their family as they are passionate to support a child that does not have a family and whom they can share their love with.
5. According to the Applicants statement they have informed their Son on the intention to adopt as well as their immediate family and they fully consented to the adoption proceedings.
6. The Applicants stated that they applied for the adoption jointly, they further stated that they have bonded well with the minor, it's their averment that they understand the legal implications of an adoption order and they have the means to provide for the child.
7. It is their statement that on 27th July, 2018 they made an application to KKPI Adoption Society, seeking to adopt the child herein and upon their application being approved by the agency, the minor was placed into their custody for fostering with a possibility of adopting the child.
8. The Child herein (Baby EN) who is the subject of the present adoption proceedings is presumed to be born on 2nd May, 2018 at Assumption of Mary Ithanga Dispensary. Ms. Teresia Muthoni Mungai of ID Number 34599016 (the biological mother of the minor) together with her mother approached the KKPI Adoption Agency on 4th May, 2018 with intention to offer the minor herein for adoption citing reasons that she was unable to contribute to the care, maintenance and welfare of the child. Consequently, on 5th December, 2018 Ms. Mungai signed the final consent for the adoption via an affidavit drawn and filed by Kanyi Ndurumo & Company Advocates.
9. Subsequently, the Resident Magistrate Children's Court sitting at Nairobi in accordance with Section 119 of the *Children Act* 2022, committed the child to House of Charity Children Home on 22nd August, 2018 vide Protection and Care No. MCP &CO/480 OF 2018. The child was placed in the custody of the Applicants on 25th March, 2019 for mandatory bonding prior to adoption. The minor has since then been in the continuous custody and care of the Applicants and has fully bonded and their families have equally bonded and accepted the child into their family. No one has come forward to claim the child.
10. KKPI Adoption Society had a committee siting on 6th March, 2019 and 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.873 and the same is dated 6th March, 2019.
11. On 13th July, 2023 this Court issued an order appointing Jackson Winny Nafula Khisa as the child's guardian ad litem and further directed that she and the Director of Children's Services file their respective reports in Court within 45 days.
12. Pursuant to Section 156(1) of the *Children Act*, Nyaranga Odundo Children's Officer prepared and filed a favourable report on 11th October, 2023 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 appointed BLM and DAN to be the legal guardians in case of any eventuality.
13. The guardian ad litem WK also filed a statutory report on October, 2023 made under Section 188 of the *Children Act*, 2022 in which she observed that the Applicants are hardworking, humble, God-fearing and social people who seem prepared to give a family to a second child in need of a family. She also reiterated that the child has a good bond with his sibling, Applicants are financially capable of



accommodating a second child in their family without strain and therefore recommended the adoption of Baby EN by the Applicants as it would be in the best interest of the child.

14. The Legal Guardians both testified, they have been friends to the Applicants for over 10 years. They understand what the role entails in the event circumstances demand, they will take on full parental responsibility.
15. The minor was present and the Court observed that the minor recognizes the Applicants as his parents.
16. 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 PCC-AAAELMM4 and PCC-AAAELM18 respectively.
17. 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.
18. 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.
19. The home visits by the guardian ad litem 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.
20. The proposed legal guardians attended Court and confirmed that they have given their consent to act as Legal Guardians.

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 orders that;
- a. The Applicants, DLM and WW are hereby allowed to adopt BABY EN.
 - b. Henceforth, the child shall be known as TML.
 - c. Her date of birth shall be 2ND MAY, 2018 at Assumption of Mary Ithanga Dispensary
 - d. She is presumed to be a citizen of Kenya by birth.
 - e. BLM and DAN are hereby appointed as Legal Guardians of the child.
 - f. The Director Immigration is 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.

P. NYAUNDI

JUDGE

In the presence of:

Sylvia Court Assistant

