



REPUBLIC OF KENYA



**In re JA (Baby) (Adoption Cause E177 of 2023)
[2024] KEHC 4138 (KLR) (Family) (26 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4138 (KLR)

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

FAMILY

ADOPTION CAUSE E177 OF 2023

PM NYAUNDI, J

APRIL 26, 2024

IN THE MATTER OF THE CHILDREN ACT, 2022

AND

IN THE MATTER OF BABY JA

IN THE MATTER OF

FWN APPLICANT

JUDGMENT

1. FWN (the Applicant herein) seeks by her Originating Summons, dated 15th August, 2023 to be allowed by this Court to; -
 - i. Adopt Baby JA (hereafter “the child”)
 - ii. The child be called AMW
 - iii. The child’s date and place of birth be declared to be 10th January, 2022 in Nairobi County.
 - iv. The child be presumed to be a Kenyana Citizen by birth; and consequently, be entitled to all the rights and benefits in respect thereof.
 - v. LWN be appointed as Legal Guardian of the child, in the event that the Applicant herein is incapacitated or in any way unable to discharge her parental obligations.
 - vi. The guardian ad litem be discharged.
 - vii. That the Registrar-General be directed to make the appropriate entries in the Adopted Children’s Register.
 - viii. This Court do issue such further orders as are in the interest of justice.



2. The Applicant a single lady and has never been married. She is Kenyan Citizen. She is a teacher by professional. The Applicant does not have children on her own and her motivation to adopt stems from a desire to be a parent and to assist vulnerable children as evidence by her affidavit dated 20th July, 2023
3. At the hearing, the Applicant stated that the minor has been in her custody for 1 year and 4 months. She further stated that her family has supported the adoption process and further stated that she understands legal implications of an adoption order. The Applicant has the means to provide for the child.
4. It's the Applicant averment that she made an application to Buckner Kenya Adoption Services to adopt the minor as evidenced in her letter dated 20th November, 2021. The Applicant further stated that statement that on 27th July, 2018 they made an application to KKPI Adoption Society, seeking to adopt the child herein and upon their application approved by agency, the minor was placed into their custody for fostering with a possibility of adopting the child.
5. The Child herein (Baby JA) is the subject of the present adoption proceedings is presumed to be 2 years old having been born on 10th January, 2022. The child was found abandoned at Lang'ata River by Good Samaritans. The matter was reported at Kibra Police Station and was recorded vide OB No. 16/19/01/2022.
6. The child was referred to New Life Children's Home Trust for care and protection and this is evidenced by the child's admission form into the said children center.
7. Consequently, the Chief Magistrate's Children's Court sitting at Nairobi in accordance with Section 119 of the Children Act 2022, committed the child to New Life Home Trust Children's on 11th April, 2022 vide Protection and Care No. MCP&CCO/E090/2022. The child was placed in the custody of the Applicant on 8th November, 2022 for mandatory bonding prior to adoption. The minor has since then been in the continuous custody and care of the Applicant and has since enjoyed the parental love, care and good nurturing accorded to her by the Applicant. According to correspondence from relevant Investigating Officers no one has come forward to claim the child and that the efforts to trace the mother or the child's relatives have been futile.
8. Accordingly, Buckner Kenya Adoption Services in a committee sited on 8th November, 2022 and subsequently, the said adoption society, 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.0629 and the same is dated 8th November, 2022.
9. An application dated 21st August, 2023 the Applicant sought orders that DAO be appointed as the child's guardian ad litem and the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit report.
10. On 30th November, 2023 this Court issued an order appointing DAO as the child's guardian ad litem and further directed that she 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, before this matter came up for hearing, Mr. Ezekiel Kimani Children's Officer prepared and filed a favourable report on 7th February, 2024 and the same was countersigned by Mary Atati the County Coordinator Children's Services in respect of the proposed adoption of the child by the Applicant where he stated that the Applicant has met the requirements for local adoption as provided in the Children Act and other enabling provisions of the law. The Applicant is financially stable to take good care of the child. The Applicant further



appointed her younger sister LWN to be legal guardian of the child in case of any eventuality arises. She also understands what the role entails in the event of eventuality, she will take on full parental responsibility. and having the minor being declared free for adoption by Buckner Kenya Adoption Agency, he recommends the Applicant to adopt the child.

12. Additionally, a similar favourable report from Adoption Society also stated that the minor has been under the care and control of the Applicant since she was abandoned and remained unclaimed for more than six months hence recommended for the adoption as it will be in the best interest of the child to be adopted by the Applicants.
13. Dorine Osiro the guardian ad litem also filed a statutory report on 18th March, 2024 under Section 188 of the Children Act, 2022 in which she observed and stated that the child feels safe and loved by the Applicants. She also reiterated that the child has a good bond with other extended family therefore recommended the adoption of Baby JA by the Applicants.
14. The minor was present in Court and the Court observed that the minor recognizes the Applicant as her mother.
15. The Applicant is of good health and financially capable of taking care of the child. She has no criminal record as evidenced by Police Clearance certificates of Serial Numbers PCC-AKTRVJRE.
16. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicant and have recommended that this Court allows the Applicant to adopt the child. This Court has evaluated the facts of this adoption.
17. This is a Local Adoption. It is evident that the Applicant has 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 Applicant is qualified and able to take care of the child.
18. 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 Applicant with the child in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with her.
19. The proposed legal guardian attended Court and confirmed that they have given she consent to act as legal guardian.

Determination

12. After carefully assessing the records herein, I am satisfied that the Applicant has 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.
13. 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.
14. The Court has evaluated the facts of this Local Adoption from the Reports filed. It is evident that the Applicant has 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.
15. 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.”
16. 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 Applicant FWN is hereby allowed to adopt BABY JA.
 - b. Henceforth, the child shall be known as AMW.
 - c. Her date of birth shall be 10th January, 2022 and her County of birth shall be Nairobi County.
 - d. She is presumed to be a citizen of Kenya by birth.
 - e. LWN is hereby appointed as Legal Guardian 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

Ms. Kimenyi Advocate for the Applicant

