



REPUBLIC OF KENYA



In re P (Child) (Adoption Cause E001 of 2023) [2024] KEHC 8036 (KLR) (27 June 2024) (Ruling)

Neutral citation: [2024] KEHC 8036 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
ADOPTION CAUSE E001 OF 2023
FN MUCHEMI, J
JUNE 27, 2024**

IN THE MATTER OF

MWM APPLICANT

RULING

1. The Amended Originating Summons dated 14th February 2024 seeks for orders of adoption of Baby Peace to be known as PNG and direct the Registrar General to make an entry in the Adopted Children's Register and the Director of Immigration be authorized to issue the child with a Kenyan passport.

The Applicant's Case

2. The brief facts are that Baby P was found abandoned in a dump site by members of public on 25th September 2022 at Clay City area of Kasarani Subcounty of Nairobi. One PK rescued the child and reported the matter at Kasarani Police Station where the incidence was booked under OB No. XXXX/2022. The police thereafter requested Happy Life Children's Home to receive the child into their care and custody pending investigations. The sub county Children's Officer, Kasarani was notified of the incident and they recommended that the child be committed to Happy Life Children's Home, a charitable children's institution, for a period of three (3) months, pursuant to the committal orders given by the Children's court at Nairobi in Protection & Care Case No. XXX of 2022.
3. The applicant avers that the police officers in charge of the matter confirmed that they had not managed to trace the biological parents of the child and that no person or relative has claimed the child since she was rescued on 25th September 2022.
4. The applicant states that she is a Civil Servant, currently employed by the National Intelligence Service and earning a monthly income of Kshs. 285,600/-. She further states that she has the financial means and capability to adopt the child and provide her with all her needs.
5. The applicant further states that she has had care and control of the child since 28th June 2023, which is more than the statutory 3 months required by the law. The applicant further states that she is in good physical and emotional health to be a parent of the child. The applicant avers that she has never



committed or been arrested or neither has she been convicted of any criminal offence. The applicant further states that her friends and family are supportive of the adoption and have recommended her as a suitable adoptive parent.

6. The applicant states that the child was declared free for adoption on 19th June 2023 by the case committee of Buckner Kenya Adoption Services and they support her application to adopt the child. The applicant further proposed her niece, Esther Wanjiku Kiriungi as the legal guardian of the child in the event of death or incapacity on her part before the child is of full age and self-reliant. One Phyllis Nyakinyi Kamau, a Social Worker, filed a consent to act as guardian ad litem and was so appointed on 15th February 2024.

Issue for determination

7. The main issue for determination is whether the applicant has satisfied the legal requirements under the *Children's Act* to be granted the adoption order.

The Law

8. The preliminary requirements for the making of an adoption order are set out in Section 184(1) of the *Children's Act* which provides as follows:-

No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free or adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.

9. Thus for an adoption order to ensue the following ought to be taken into consideration:-
 - a. A child must be at least six (6) weeks old and free for adoption;
 - b. The child concerned must have been in the continuous care and control of the applicant within Kenya for a period of three (3) consecutive months preceding the filing of the application; and
 - c. Both the child and the applicant have been evaluated and assessed by a registered adoption society in Kenya.

10. In this cause, the minor was abandoned, a fact confirmed by the police at Kasarani Police Station vide a letter dated 25th September 2022 and was recorded as OB No. XXXX/2022. Similarly, a letter by Sub-County Children's Officer, Kasarani Sub-County, a letter from Kasarani Police Station to Happy Life Children's Home as well as a Certificate to Declare a Child Free for Adoption Serial Number XXXX, a report to declare the child free for adoption by Buckner Kenya Adopting Services and a report by the Children's Officer to the High Court Thika dated 2nd April 2024, the abandonment of Baby Peace is reiterated and confirmed. Evidently, neither the police nor the institution to whom the committal for care and protection were given, have received a claim for the child. Therefore, legal abandonment may be presumed pursuant to Section 187(2)(a) of the *Children Act* which provides:-

Abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period exceeding one year.

11. Having confirmed that the minor has been abandoned in law, the provision of consent is hereby dispensed with as required under Section 187(1)(a-c) of the *Children Act*.
12. Notably, the Department of Children's Services in Thika made a social enquiry report and in its report dated 26/11/2020 requested by the court recommended the applicant for the adoption of the child.



13. Similarly, the Guardian ad litem has recommended adoption of the child by the applicant as being in the best interests of the child. This is the person who has been given legal standing to make statements on behalf of the child. The reports show that the applicant has taken the child to her home; that she has the financial capability to take care of the child; that her home environment is safe secure and satisfactory; that the child relates well with the applicant. There is no evidence that the applicant has received or agreed to receive any reward in consideration for the adoption.
14. As such, the applicant has complied with all the requirements of the law for purposes of adoption and that it is my considered view that it is in the best interests of the child that the applicant be permitted to adopt the child. Accordingly, the Amended Originating Summons dated 14th February 2024 is allowed in the following terms:-
 - a. That the Applicant MWM be authorized to adopt Baby P to be known as PNG.
 - b. That EK is hereby appointed as the legal guardian of the Baby PNG
 - c. That the Registrar-General be directed to enter this adoption in the Adoption of Children's register.
 - d. That the child's date of birth be 24th September 2022 and place of birth be Kasarani, Nairobi County.
 - e. That the child be issued with a birth certificate.
15. That it is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27TH DAY OF JUNE 2024.

**F. MUCHEMI
JUDGE**

