



**In re NK (Child) (Adoption Cause E180 of 2022)
[2023] KEHC 19239 (KLR) (Family) (26 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 19239 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E180 OF 2022
MA ODERO, J
MAY 26, 2023
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY NK
AKA UNKNOWN BABY GIRL (THE CHILD)**

**IN THE MATTER OF
EMK APPLICANT**

JUDGMENT

1. Before this court is the Originating Summons dated October 4, 2022 by which the Applicant EMK seeks the following orders:-
 1. That the applicant be authorized to adopt BABY NK a child who is to be known as WMM and the Registrar General be directed to enter this adoption into the register of Adoptions.
 2. That RMK and EN be appointed as the Legal Guardians of the minor.
 3. That the child be presumed to be born in Kenya.
2. The Application was supported by the statement of even date sworn by the Applicant. The matter was canvassed by way of *vive voce* evidence on the virtual platform.
3. The Applicant is a single woman who has never been married. She has no biological children of her own. The Applicant now wishes to adopt the subject child to fulfil her desire to have a child of her own.
4. The Applicant confirmed that she understands the legal implications of an adoption order. She undertook to accord to the subject child all rights due to a biological child including the right to inherit



Analysis and Determination

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the [Children's Act 2022](#): -
 - "(1) A person shall not commence any arrangements for the adoption of a child unless—
 - (a) the Council, in accordance with the rules, has declared the child free for adoption; and
 - (b) the child has attained the age of six weeks."
7. The subject child is a girl-child who is believed to have been born on June 1, 2021. She is now aged three (3) years old and is above the Six(6) week age limit provided for in law.
8. Buckner Kenya Adoption Services which is a registered adoption agency have annexed to their report a copy of their certificate serial Number xxxx dated February 18, 2022 declaring the child Free For Adoption. I am satisfied that all the legal prerequisites for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen. A copy of her National Identity Card is annexed at Page 1 of the summons.
10. The Applicant is a single woman and has never been married. She has no biological child due to medical complications. The Applicant now seeks to adopt a child in order to fulfil her desire to have a child to call her own. The Applicant is also motivated by the desire to provide a needy child with a home.
11. The Applicant is a trained hair stylist and is employed at Serenity Spa at Village Market. She has annexed copies of her pay slip at Pages 33-35 of the summons as proof of employment. The Applicant has also annexed copies of her bank statements for an account held at Co-operative Bank of Kenya.
12. The Applicant earns a monthly salary of Kshs 90,000. She also owns land in Naivasha and has annexed a copy of the Title Deed (Page 36). I am satisfied that the Applicant is financially secure and is able to provide for the needs of the child.
13. The Applicant is a Christian and intends to raise the child in the Christian faith. At Page 21 of the summons is a letter of Recommendation written by Apostle AOO or the [particulars withheld] Center, where the Applicant worships.
14. The Applicant was examined by a Doctor and was found to be mentally and physically fit. She has annexed at Page 40 of the summons copy of a Clearance certificate issued to her by the Director Criminal Investigations proving that the Applicant has no criminal records.
15. The Applicant told the court that her extended family are aware of and support her intention to adopt the subject child. She has appointed her brother and sister in law as the legal Guardians for the child. The proposed legal Guardians RMK and EN have both signed an Affidavit of consent dated November 15, 2021 (see Page 41 of the summons)
16. Based on the evidence available I am satisfied that the Applicants is a suitable adoptive parent.



17. The subject child is believed to have been born on June 1, 2021. The child was abandoned a few days after her birth at the gate of Bahati Health Centre along Heshima Road in Nairobi. A nurse on night duty rescued the baby and took her into the Health Centre for medical treatment.
18. The abandonment was reported at Jogoo Road Police Station vide OB Number 16 of the June 2, 2021. Thereafter on June 3, 2021 the Nairobi Children's Court committed the child to New Life Home Trust for care and protection. On March 23, 2022, the child was released into the custody of the Applicant under a Foster Care Agreement.
19. 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.”
20. The subject child was abandoned in Nairobi County within the Republic of Kenya. She is therefore presumed to be a citizen of Kenya by birth.
21. Efforts to trace the biological mother/relatives of the child have not been successful. To date no person has come forward to claim the child. A final police letter dated February 12, 2022 is annexed at page 47 of the summons.
22. Given the fact of the child's abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with Section 187 (1) (a) of the Children Act 2022.
23. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the Children Act 2022 provides:-
 - “(8). In all actions concerning children, whether undertaken by public or
 - (1) private social welfare institutions, courts of law, administrative authorities or legislative bodies—
 - (a) the best interests of the child shall be the primary consideration;” [own emphasis]
24. This is a child who was abandoned shortly after her birth. She faced an uncertain future living in children's Homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.
25. The Applicant has lived with the child in her home for close to two (2) years. The child has undoubtedly bonded with the Applicant whom she considers as her mother.
26. A Home visit was conducted on February 20, 2022. The Applicant lives in a one bed-roomed apartment in Kitisuru. The home was in a secure compound and had adequate space and facilities to raise a young child.
27. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Children's Services. All three reports were positive and all recommend the adoption.
28. Finally, I am satisfied that his adoption serves the best interests of the subject child. I therefore allow this application and make the following orders:-
 - (1) EMK is authorized to adopt the child known as BABY NK.



- (2) Upon adoption the child will be known as WMM.
- (3) The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and privileges thereto.
- (4) The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
- (5) RMK and EN are appointed as the legal Guardians for the child.

DATED IN NAIROBI THIS 26TH DAY OF MAY, 2023.

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MAUREEN A. ODERO

JUDGE

