



REPUBLIC OF KENYA



**In re Baby AI (Baby) (Adoption Cause E005 of 2022)
[2024] KEHC 9797 (KLR) (29 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9797 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
ADOPTION CAUSE E005 OF 2022
DKN MAGARE, J
JULY 29, 2024**

IN THE MATTER OF THE CHIDREN'S ACT NO. 29 OF 2022

AND

IN THE MATTER OF BABY AI(CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER BY RWM

JUDGMENT

1. This Judgment is in respect of the Originating Summons dated 23/5/2022 seeking an adoption order.
2. The application seeks for orders that:
 - a. The Applicant be authorized to adopt baby AI (Child).
 - b. Upon making the adoption order, the child be known as ANW .
 - c. The Registrar General do make the appropriate entry of ANW in the adopted children's register.
 - d. The child director of immigration services do issue ANW with a Kenyan Passport.
 - e. PWN be appointed as the legal guardian of ANW .
 - f. The guardian ad litem be discharged.
3. The application is premised on the grounds on its face and in the Supporting Affidavit of RWN sworn on 13/5/2022.
4. The Applicant is 54 years of age and a teacher by profession earning a handsome salary without a biological child. The child has been under the Applicant's continuous care since 2/7/2018.
5. That the child was abandoned and the consent of the mother was given.



Analysis

6. The issue is whether the court should allow the adoption herein. Section 183 of the Children's Act provides as follows: -
- (1) Subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as "adoption order", authorizing an applicant to adopt a child.
 - (2) All proceedings under this Part shall be heard and determined in chambers, and the identity of the child and the applicants shall be kept confidential.
 - (3) In this Act, adoption means local, kinship and foreign adoption.
 - (4) For the purposes of this Part—
 - (a) "kinship adoption" has the meaning assigned to it in section 2;
 - (b) "local adoption" means an adoption in relation to which the child is resident in Kenya; and
 - (ii) the adopting parent or parents are Kenyan nationals resident in Kenya; and
 - (c) "foreign adoption" means an adoption in relation to which—
 - (i) the adopting parent or parents are Kenyan nationals with dual citizenship;
 - (ii) the adopting parent or parents are foreign nationals whether or not resident in Kenya;
 - (iii) the adopting parent or parents are not Kenyan nationals but are biologically related to the child; or
 - (iv) the adopting parent or parents were once Kenyan nationals but have lost their nationality by operation of the law of the host country to which the prospective parent or parents have a nationality.
7. Pre-requisites for adoption are also stated under the section 184 of the Children's Act, 2022 as follow:
- (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.
 - (2) A person, including a parent, guardian or adoption society, shall not, prior to the making of an adoption order, entrust a child to the care, possession or control of any person not qualified to adopt a child in accordance with this Act.
 - (3) An applicant shall not preselect a prospective adoptive child except—
 - (a) in the case of kinship adoption;
 - (b) Where the applicant is a foster parent seeking to adopt a fostered child under the applicant's care.
 - (4) The Secretary shall monitor and submit reports to the courts on the wellbeing of a child who is subject to adoption proceedings.



- (5) Any person who contravenes subsections (1) or (2) of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings, or to both.
8. Under Section 185, Children who may be adopted are stated as follows:
- (1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya.
 - (2) Without prejudice to the generality of subsection (1), no Court may entertain an application for an adoption order in respect of a child unless—
 - (a) the child concerned has been in the continuous care and control of the applicant within Kenya for a period of three consecutive months preceding the filling of the application; and
 - (b) the application for an adoption order is supported by a report made by a duly registered adoption society recommending that an adoption order be made.
 - (3) The report referred to in subsection (2)(b) shall contain the society's findings and recommendations in respect of the child and the applicant or applicants, as the case may be.
 - (4) The following children shall be eligible for adoption—
 - (a) a child who is an orphan and has no guardian or caregiver able and willing to take care of the child;
 - (b) a child who has been abandoned or whose parents' or guardian's whereabouts cannot be traced within a period of one year;
 - (c) children who are willingly offered for adoption by their biological parents in accordance with regulations made under this Part.
9. Under section 185 on who may apply to adopt a child, the following is the law:
- (1) The Court may make an adoption order on application by—
 - (a) a sole applicant; or
 - (b) two spouses jointly.
 - (2) The Court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) 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.
 - (4) The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.
 - (5) The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that



warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.

- (6) The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—
 - (a) is of unsound mind within the meaning of the *Mental Health Act* (Cap. 248);
 - (b) is incapable of exercising proper care and guardianship of a child;
 - (c) has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
 - (d) in the case of joint applicants, if the applicants are not married to each other;
 - (e) is a sole male applicant except where the applicant is a biological relative of the child; or
 - (f) is a foreign applicant except where the applicant is a biological relative of the child.
 - (7) Notwithstanding anything contained in this section the Court may at its sole discretion decline to make an adoption order in favour of any person or persons if the Court is of the view that it is not in the best interests of the child to make the order.
 - (8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—
 - (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
 - (b) on the application of one of the spouses, the consent of the other spouse; and
 - (c) in the case of a child who has attained the age of ten years, the child himself or herself.
 - (9) If the child referred to in subsection (8)(c) has a disability which restricts or impairs the child's ability to independently give his or her consent, the child shall be accorded such assistance, including the assistance of an intermediary, to facilitate his or her written consent.
10. In light with the above law, the court also perused all the documents filed in court on the consent and affidavit of fitness filed by the child's guardian ad litem.
 11. The report by the Children Officer dated 17/1/2024 was also filed in court on 19/1/2024 certifying the applicant as meeting the legal parameters to adopt the minor herein.
 12. The applicant in my view, as supported by evidence on record, has met all the legal requirements of adoption. No doubt, the Applicants are clear with intentions to protect, support, provide inheritance for and maintain the child as their own.
 13. The commendation report by the Children's Officer and the Child Welfare Society of Kenya, a Registered Adoption Society too gives the Applicants the go ahead to adopt the minor. They describe the Applicants as committed to caring and maintaining the child and hold the view that the adoption herein sought will be in the child's best interest.
 14. I am satisfied that they have bonded well. The minor is in a good home. I am satisfied that the child will be in a good home. The legal guardian, Mary Wangai Kiama confirmed that she signed the consent to act as a legal guardian and understood her role well.



15. KKPI confirmed that they issued certificates confirming that the child in this matter is free for adoption. They also assessed the Applicant, found suitable and duly counselled on adoption.
16. Having listened to the evidence and perused the requirements for adoption, I find that the Originating Summons is merited and as such I allow the same.
17. Thereof, the application for adoption is merited and I allow it.

Determination

18. In the upshot, I make the following orders:
 - a. The Applicant be authorized to adopt baby AI (Child).
 - b. Upon making the adoption order, the child be known as ANW .
 - c. The Registrar General do make the appropriate entry of ANW in the adopted children's register.
 - d. The child director of immigration services do issue ANW with a Kenyan passport.
 - e. PWN be appointed as the legal guardian of ANW .
 - f. The guardian ad litem is discharged.
 - g. The file is closed.

DELIVERED, DATED and SIGNED at NYERI, on this 29th day of July, 2024. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of: -

Applicant present

Court Assistant – Jedidah

