



REPUBLIC OF KENYA



**In re Adoption of Baby AP alias APB (Minor) (Adoption Cause E012 of 2024) [2024] KEHC 9636 (KLR) (Family) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9636 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E012 OF 2024  
H NAMISI, J  
JULY 26, 2024  
IN THE MATTER OF THE CHILDREN ACT, CAP 141 OF THE LAWS OF KENYA  
AND  
IN THE MATTER OF ADOPTION OF BABY A. P. ALIAS A. P. B (MINOR)**

**IN THE MATTER OF  
JWK ..... APPLICANT**

**JUDGMENT**

1. Before this Court is the Originating Summons dated 19 January 2024, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
  - i. That the Applicant, J.W.K, be authorised to adopt A.P. alias A.P.B and she be known as N.P.K;
  - ii. That the child be presumed to be a Kenyan citizen by birth;
  - iii. That the Registrar General be directed to enter the adoption in the Adopted Children Register;
  - iv. That the Director Immigration be authorised to issue the child with a Kenyan passport;
  - v. That the Applicant be authorised to travel with the child and live with her in the United States of America;
  - vi. That M.S.A. and B.W.M be appointed the legal guardians of the child in the event of death or incapacity of the Applicant before the child of age or independent;
  - vii. That the consent of the biological parents be dispensed with;
  - viii. That this Court be pleased to make any further orders it deems necessary.
2. The matter was canvassed by way of viva voce evidence on the virtual platform on 27th June 2024.



### **The Child**

3. The child (female) was born on 11th October 2012. She is currently 12 years old. The child was found abandoned on 11th October 2012 at Soweto Slums, Nairobi County. The matter was reported to the Police vide OB No 29/11/10/2012. The child was committed to Mogra Children's Home by the Children's Court at Nairobi on 16th December 2019. (Annexure JWK 2)
4. The child was declared free for adoption by the KKPI Adoption Society, a registered Adoption Agency, vide the annexed Certificate serial number 844. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.

### **The Applicant**

5. The Applicant is a Kenyan with dual citizenship. She resides in both Kenya and the USA, where she is a Professor at the University of Wisconsin – Milwaukee, College of Nursing. She is single and financially stable, earning a gross monthly income of USD 8,904.11. The Applicant does not have any biological children, and it is her desire to leave a legacy by raising children. She is desirous of exercising parental responsibility over the child and give the child the basic needs and protection.

### **The Adoption Application**

6. I have considered the Summons, the evidence on record as well as the various reports filed.
7. The duty of this Court is to analyse the material before it to determine whether the Applicant is a suitable adoptive parent. The Applicant states that she is a practising Christian and intends to raise the child in the Christian faith. She is a member of Southbrook Church and is in a prayer team. The Applicant has annexed copies of bank statements, Valuation Report for the home in the USA, Payslips and a copy of the Agreement for Sale for an Apartment in Nairobi, as proof of her financial stability.
8. The Applicant has annexed a copy of clearance certificate from the Kenya Police Service as proof that she has no criminal record.
9. Although prayer 6 of the Originating Summons refers to two proposed legal guardians, the Applicant only presented one before this Court. The Applicant has appointed B.W.M. as legal guardian. The said legal guardian signed a consent dated 5th January 2024 indicating her willingness to step in and care for the child in the event the Applicant is unable to provide for the child. BWM is a neighbour to the Applicant at her rural home. She is a teacher by profession.
10. From the material availed, I am satisfied that the Applicant is a suitable adoptive parent.

### **Analysis and Determination**

11. Article 14 (4) of *The Constitution* provides as follows:

A child found in Kenya who is, or appears to be, less than 8 years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.
12. The child was found abandoned within the Republic of Kenya the same day she was born. I, therefore, declare that the child is a citizen of Kenya by birth.
13. The child was abandoned and all efforts by the police to trace the child's parents/relatives have borne no fruit. The final letter dated 21st July 2022 from Soweto Police Station, Nairobi (Annexure JWK -3) indicates that efforts to trace the parents have been futile. In the circumstances, there exists no known



person from whom consent for this adoption can be sought and/or obtained. I, therefore, waive this requirement in line with section 185 (4)(b) of the Children Act, Cap 141 of the Laws of Kenya.

14. In deciding any matter involving a child, the court is obligated to give priority to the best interest of the child. Section 8 of the Children Act provides:
1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies –
    - a. The best interests of the child shall be the primary consideration;
    - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule;
  2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-
    - a. Safeguard and promote the rights and welfare of the child;
    - b. Conserve and promote the welfare of the child; and
    - c. Secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
15. This child who was abandoned soon after birth faced an uncertain future in the children's homes and other similar institutions. By the time the application for adoption was filed, the child had already been to two children's homes. This adoption, therefore, allows the child the opportunity to be raised in a stable and loving home environment.
16. I have considered the Reports filed by the Adoption Agency, the Guardian Ad Litem, the Director of Children Services, all of which were positive and recommended the adoption. I was able to see the child online. She is happy, healthy and cheerful. She is a student at Makini School, which she enjoys attending. The child has been residing with the Applicant since December 2023. She appeared to be very comfortable with the Applicant.
17. It is therefore my view that the adoption does serve the best interests of the child.
18. Accordingly, I allow the Summons and make the following orders:
- i. That the Applicant, J.W.K is allowed to adopt the child currently identified as Baby A.P alias Baby A.P.B;
  - ii. Upon adoption, the child shall be renamed as N.P.K;
  - iii. The child is declared to be a Kenyan citizen by birth, entitled to all the rights and privileges under the Constitution of Kenya and all applicable laws;
  - iv. B.W.M is appointed as Legal Guardian of the child,
  - v. The Guardian *ad Litem* is hereby discharged;
  - vi. That the Registrar-General is directed to make the appropriate entries in the Adopted Children's Register;

**DATED AND DELIVERED AT NAIROBI THIS 26 DAY OF JULY 2024**



**HELENE R. NAMISI**

**JUDGE**

Delivered on a virtual platform in the presence of

Mr. Kimani .....for the Applicant

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