



**In re AP alias APB (Minor) (Adoption Cause E208 of 2023)
[2024] KEHC 9276 (KLR) (Family) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9276 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E208 OF 2023
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 25 October 2023, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
 - i. That the Applicant, of Kenyan ID number 22xxxxx3, be authorised to adopt the child currently known as P.N alias P.N;
 - ii. That the child be presumed to be a Kenyan citizen having been found in Kenyan at the time of birth;
 - iii. That upon making the Adoption Order the said child be known as A.T.W
 - iv. That the Registrar General be directed to enter into the Register of Adoptions and a subsequent Birth Certificate do issue by the Registrar of Births and Deaths;
 - v. That A. L. O is appointed legal guardian of the child P. N alias P. N in the event that the applicant herein is in any way incapacitated or in any way unable to discharge her parental obligations
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 14th May 2022 and is currently 22 months old. The child was found abandoned at the gate of The Latter-Day Saints Church Westlands, along Waiyaki Way on 17 May 2022. The matter was reported to the Kabete Police Station vice OB NO. 58/17/05/2022. The child was then placed at The Nest Children Home and later committed to the same home by the Children's Court at Nairobi on 28 September 2022.
4. The child was declared free for adoption by Little Angels Network, a registered Adoption Agency, vide the annexed Certificate serial number 002322. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.

The Applicant

5. The Applicant is a Kenyan citizen and works as a Lecturer at the Co-operative University of Kenya. She resides in Nairobi and is single. She has no biological children. It is her desire to adopt the child and include her as an integral part of her family.

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. The Applicant has annexed copies of bank statements as proof of her financial stability. The Applicant has annexed a copy of clearance certificate from the Kenya Police Service as proof that she has no criminal record.
8. The proposed legal guardian, A.L.O, is a land surveyor by profession. He has known the Applicants since the two were in college together. He has met the child and confirmed that he understood his role and responsibility as a legal guardian. Produced before this Court is his consent dated 27 May 2021.
9. From the material availed, I am satisfied that the Applicant is a suitable adoptive parent.

Analysis and Determination

10. 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 know, is presumes to be a citizen by birth.
11. The child was found abandoned within the Republic of Kenya 3 days after she was born. I, therefore, declare that the child is a citizen of Kenya by birth.
12. 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 14 December 2022 from Kabete Police Station, Nairobi indicates that no one has appeared at the Police Station to claim the child. 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.
13. 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.
14. This child who was abandoned soon after birth faced an uncertain future in the children’s homes and other similar institutions. This adoption, therefore, allows the child the opportunity to be raised in a stable and loving home environment.
15. 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 lay comfortably in the Applicant’s arms. The child has been residing with the Applicant for about a year.
16. It is, therefore, my view that the adoption does serve the best interests of the child.
17. Accordingly, I allow the Summons and make the following orders:
 - i. That the Applicant, L.W.M of ID Number 22xxxxx3 is allowed to adopt the child currently identified as P.N alias P.N;
 - ii. Upon adoption, the child shall be renamed as A.T.W;
 - 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. A. L. O 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

..the Applicant - in person

