



**In re BH aka ABB (Baby) (Adoption Cause E175 of 2022)  
[2024] KEHC 10591 (KLR) (Family) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 10591 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**ADOPTION CAUSE E175 OF 2022**

**CJ KENDAGOR, J**

**JULY 25, 2024**

**IN THE MATTER OF ADOPTION OF BABY BH AKA ABB (BY  
PGK AND LWG)**

**IN THE MATTER OF**

**PGK ..... 1<sup>ST</sup> APPLICANT**

**LWG ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is the application dated 8<sup>th</sup> September 2022. The Applicants PGK and LWG are seeking to be authorized to adopt Baby BH, aka ABB, hereinafter referred to as the child. Upon adoption, the child is to be known as SKG. PGK and LWG will be appointed as the child’s legal guardians upon the granting of the adoption orders.
2. The Applicants are a married couple and Kenyan citizens, as evidenced by copies of their Kenyan National Identity Cards and Certificate of Marriage. PGK and LWG are self-employed, and they testified as to their financial capability and ability to provide for the child. Their health status is good, as evidenced by their medical reports, and they do not have any previous criminal records, as evidenced by their certificates of Good Conduct issued by the Directorate of Criminal Investigations. They have indicated their desire to adopt the child by their being married without being blessed with any child. The applicants desire to help needy children and to grow their family.
3. The report from the Ministry of Labour and Social Protection State Department for Social Protection and Senior Citizen Affairs—Directorate of Children’s Services (Nairobi County) dated 6<sup>th</sup> December, 2023 indicates that the child is male and 4 years 11 months old. He is Kenyan and was found abandoned near Marewa Primary School. The child was declared free for adoption on 18<sup>th</sup> December 2019 by Kenya Children’s Home Adoption Society (KCHAP) vide freeing Certificate Serial Number 1918.



4. There is a consistent message that there is the urge for PGK and LWG to have children of their own and their motivation to provide for an abandoned child.
5. The child is a Kenyan citizen by Article 14 (1), which provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.
6. In light of the best interests of the child principle provided for under Article 53 (2) of the Constitution of Kenya, 2010. Sections 8 (1), (2), and (3) of the Children's Act and the 1<sup>st</sup> Schedule of the Children's Act, this Court must prioritize the child's best interests in making decisions touching on her.
  - a. Article 53 of the Constitution, 2010 states that a child's best interests are paramount in every matter concerning the child.
  - b. Sections 8 (1), (2) and (3) of the Children's Act provides as follows;
    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 public interest.
    3. In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.
  - c. The First Schedule, as provided for under Section 8 (1) of the Children's Act, provides best interests considerations to be as follows:
    1. The age, maturity, stage of development, gender, background, and any other relevant characteristics of the child.
    2. Distinct special needs (if any) arising from chronic ailment or disability.
    3. The relationship of the child with the child's parent (s) and/ or guardian (s) and any other persons who may significantly affect the child's welfare.
    4. The preference of the child, if old enough, to express a meaningful preference.
  5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.
  6. The stability of any proposed living arrangements for the child.



7. The motivation of the parties involved and their capacities to give the child love, affection, and guidance.
  8. The child's adjustment to the child's present home, school, and community.
  9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/ or guardian (s), including physical access.
  10. The capacity of each parent and/ or guardian (s) to cooperate or to learn to cooperate in child care.
  11. Methods for assisting parental and/ or guardian cooperation and resolving disputes and each parent's/ guardian's willingness to use those methods.
  12. The effect of the child if one parent/ guardian has sole authority over the child's upbringing.
  13. The existence of domestic abuse between the parents/ guardian (s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
  14. The existence of any history of child abuse by a parent and/ or guardian (s); or anyone residing in the same dwelling as the child.
  15. Where the child is under one year of age, whether the child is being breast-fed.
  16. The existence of a parent's (s) or guardian's (s) conviction for a sex offense or a sexually violent offense under the *Sexual Offences Act*.
  17. Where there is a person residing with a parent or guardian, whether that person -
    - a. Has been convicted of a crime under this Act, the *Sexual Offences Act*, the Penal Code, or any other legislation.
    - b. Has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
  18. Any other factor which may have a direct or indirect effect on the physical and psychological well-being of the child.
7. The report from the Ministry of Labour and Social Protection State Department for Social Protection and Senior Citizen Affairs – Department of Children's Services (Nairobi County), the report from Buckner Kenya Adoption Services (BKAS) Adoption Society, the guardian ad litem and the proposed legal guardians indicate that the child is well known to the adoptive parents and that he will be well taken care of in their care and custody.
  8. I find that this adoption gives the child a chance at a better life and education in a loving and stable home with the adoptive parents.
  9. In the circumstances, I allow the originating summons dated 8<sup>th</sup> September, 2022 and make the following orders:
    - a. The Applicants PGK and LWG are authorized to adopt the child known as BH, aka ABB.
    - b. Upon adoption, the child shall be known as SKG.
    - c. The child is declared a Kenyan citizen by birth and is entitled to all rights and benefits under the *Constitution* of Kenya, 2010, and all applicable laws.



- d. PGK and LWG are appointed legal guardians of the child.
- e. The Registrar General is directed to make the relevant entries in the Adopted Children's Register in respect of the child.
- f. The Registrar of Births and Deaths is directed to issue a birth certificate in respect of the child's new name.

22. It is so ordered.

**DATED AND DELIVERED AT NAIROBI VIA TEAMS ONLINE PLATFORM ON THIS THIS 25<sup>TH</sup> DAY OF JULY, 2024.**

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant - Ahmed

