



**In re EH (Minor) (Adoption Cause E027 of 2024)  
[2024] KEHC 10485 (KLR) (Family) (29 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10485 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E027 OF 2024  
H NAMISI, J  
AUGUST 29, 2024  
IN THE MATTER OF THE CHILDREN ACT, CAP 141 OF THE LAWS OF KENYA  
AND  
IN THE MATTER OF ADOPTION OF BABY EH (MINOR)**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. The Applicants have filed Originating Summons dated 29 January 2024, seeking the following orders:
  - i. That the consent of the biological parents of Baby EH be dispensed with since the child was abandoned shortly after birth;
  - ii. That the Applicants herein be and are hereby authorised to adopt Baby EH and the child shall be called ICA;
  - iii. That the Court be pleased to appoint KMK And EKOM as the legal guardians for EH upon granting the adoption order;
  - iv. That the Registrar General be ordered to make the appropriate entries in the Adopted Children’s Register in respect of Baby EH ;
  - v. That EH be considered a Kenyan citizen;
  - vi. That the court be pleased to make any further orders it deems necessary.



2. The Summons is accompanied by Statement in Support of the Application for an Adoption Order, Affidavit in Support of the Application and annexures thereto.
3. The matter was canvassed by way of *viva voce* evidence on the virtual platform on 11 July 2024.

### **The Child**

4. It is estimated that the child (male) was born on 21st February 2019. The child was abandoned by his mother at the Kenyatta National Hospital on 21 March 2019. The matter was reported to the Kenyatta Police Post vide OB No. 19/XX/X/2019. The child was admitted at the Kenyatta National Hospital from 21 March 2019 to 17 May 2019, before he was moved to the Hope House Babies Home. The child was committed to the Home by the Children's Court at Nairobi on 3 July 2019.
5. The court had the opportunity to interact with the child at the hearing. He appeared to be healthy and happy, seated on the 1st Applicant's lap. He identified the Applicants as "mom" and "Dad". The court observed that the child had bonded well with the Applicants.
6. The child was declared free for adoption by the KKPI Adoption Society, a registered Adoption Agency, vide the annexed Certificate serial number XXX. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.

### **The Applicants**

7. The Applicants are Kenyan citizens, residing in [particulars withheld], Nairobi County. They are a married couple, having celebrated their marriage August 2008. They do not have any other children.
8. The 1st Applicant, aged 47 years old, is an IT specialist. The 2nd Applicant is also 47 years old and is an Optometrist. They indicated that due to challenges in having their own biological children, they opted to pursue adoption. The child was placed with them on 20 April 2021. They confirmed that they have bonded with him and he is part of their family.
9. The Applicants confirmed that they fully understood the implications of an adoption order and that the same is irreversible.

### **The Adoption Application**

10. I have considered the Summons, the evidence on record as well as the various reports filed. The duty of this Court is to analyse the material before it to determine whether the Applicants are suitable adoptive parents.
11. The Applicants states that they are practising Christians and intend to raise the child in the Christian faith. They attend the International Christian Centre, [particulars withheld] campus. The Applicants have annexed copies of bank statements, and pay slips as proof of their financial stability.
12. The Applicants have annexed copies of clearance certificates from the Kenya Police Service as proof that they have no criminal record. They have provided Recommendations letters as well in proof of their character and good standing.
13. The Applicants presented KMK And EKOM as proposed legal guardians for the child. The said legal guardians, a married couple, signed a consent dated 29 January 2024 indicating their willingness to step in and care for the child in the event the Applicants are unable to provide for the child.
14. From the material availed, I am satisfied that the Applicants are suitable adoptive parents.



## Analysis and Determination

15. 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.

16. The child was abandoned within the Republic of Kenya a few days after he was born. I, therefore, declare that the child is a citizen of Kenya by birth.

17. The child was abandoned and all efforts by the police to trace the child's parents/relatives have borne no fruit. The letter dated 11 November 2019 from Kenyatta Police Post, Nairobi indicates that efforts to trace the child's parents have yielded no positive results. 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.

18. 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.

19. 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.

20. 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. It is, therefore, my view that the adoption does serve the best interests of the child.

21. Accordingly, I allow the Summons and make the following orders:

- i. That the Applicants, AA and CCC, are allowed to adopt the child currently identified as Baby EH ;
- ii. Upon adoption, the child shall be renamed as ICA;
- 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. KMK And EKOM are appointed as legal Guardians 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 29 DAY OF AUGUST 2024**

**HELENE R. NAMISI**

**JUDGE**

Delivered on a virtual platform in the presence of

Applicants in person

