



**In re Adoption of Baby NAW (Minor) (Adoption Cause E123 of 2024)
[2024] KEHC 11231 (KLR) (Family) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11231 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E123 OF 2024
CJ KENDAGOR, J
SEPTEMBER 26, 2024
IN THE MATTER OF THE CHILDREN’S ACT NO. 8 OF THE LAWS OF KENYA
AND
IN THE MATTER OF ADOPTION OF BABY NAW (MINOR)**

IN THE MATTER OF
SHAA 1ST APPLICANT
MAA 2ND APPLICANT

JUDGMENT

1. Before this Court is the application dated 17th March, 2024. The Applicants SHAA and MAA are seeking to be authorized to adopt Baby FTAA hereinafter referred to as the child and upon adoption, the child is to be known as FTAA. ROA and FOM be appointed as the child’s legal guardians upon granting of the adoption orders.
2. The Applicants are a married couple, as evidenced by the Marriage certificate annexed in the application. The 1st Applicant, SHAA, is a Cameroonian, as evidenced by his passport, and runs a business in Kenya, as evidenced by the Certificate of Incorporation. The 2nd Applicant is a Kenyan citizen, evidenced by copies of their Kenyan National Identity Card and is self-employed. The Applicants’ financial capability and ability to provide for the child is evidenced by financial statements. 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 that they would like to legalize the relationship between the child and MAA through kinship adoption to enable the child to become a complete member of the family.



3. The report from the Ministry of Labour and Social Protection State Department of Social Protection - Directorate of Children's Services (Nairobi County) dated 8th July 2024 indicates that the child is male and 9 years 6 months old, having been born on 23rd December, 2014. The child is a Cameroonian born to SHAA and JBA, both Cameroonians. The 1st Applicant is the biological father to FTAA. JBA is the biological mother to the child. She is a Kenyan, and she swore an affidavit giving her consent for the Applicant herein to adopt the child by MAA. The Applicants and the child have been living together since 2018. The child was declared free for adoption on 16th February, 2024 by Buckner Adoption Society vide freeing Certificate Serial Number xxxx.
4. The child is a Kenyan citizen by virtue of 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.
5. 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 No. 29 of 2022 and the 1st Schedule of the Children's Act No. 29 of 2022, this Court has an obligation to 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 of paramount importance in every matter concerning the child.
 - b. Sections 8 (1), (2) and (3) of the Children's Act No. 29 of 2022 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 No. 29 of 2022 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.
6. The report from the Ministry of Labour and Social Protection State Department of Social Protection - Directorate of Children's Services (Nairobi County), the report from Buckner Kenya Adoption Services, the guardian ad litem and the proposed legal guardian indicate that the child will be well taken care of in the care and custody of the adoptive parent and are unanimous that it will be in the minor's



best interests for the Court to grant the Adoption Orders. I see no reason to dissent from those views. I am satisfied that the Applicant meets all the attributes required of Applicants in Section 158 of the Children Act, 2022. I am also satisfied that the parties understand the consequences and import of Adoption Orders. Finally, I am satisfied that it is in the minor's best interests for the Adoption Orders to be given.

7. Having perused all the documents and considered all the evidence, I am persuaded that the Applicants will provide a suitable home and parentage for the minor herein.
8. In the circumstances, I allow the originating summons dated 17th May, 2024 and make the following orders:
 - a. The Applicants SHAA and MAA be authorized to adopt the child known as FTAA.
 - b. Upon adoption, the child shall be known as FTAA.
 - 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. ROA and FOM be appointed as 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.
 - g. The Guardian ad litem is hereby discharged.

It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 26TH DAY SEPTEMBER, 2024.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

No appearance for the Applicants

