



**In re Adoption of Baby AA (Adoption Cause E005 of 2023)
[2024] KEHC 15284 (KLR) (Family) (29 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E005 OF 2023
PM NYAUNDI, J
NOVEMBER 29, 2024
IN THE MATTER OF THE CHILDREN’S ACT 2022, LAWS OF KENYA
AND
IN THE MATTER OF BABY AA
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION
BY
PCO AND SAO**

IN THE MATTER OF
PCO 1ST APPLICANT
PCO 2ND APPLICANT

JUDGMENT

1. Vide Originating Summons, dated 14th December, 2022 the Applicants PCO AND SAO herein seek the following orders,
 - i. That the consent of the biological father of the child is attached and the consent of the biological mother be dispensed with since said mother abandoned the child immediately after birth hence relinquishing her parental rights, abandoned the minor and to date the child has remained in the sole custody of the biological father.
 - ii. That they be allowed to adopt Baby AA.



- iii. That the Registrar-General do make the appropriate entries in the Adopted Children's Register in respect of the minor and further the Registrar of Births and Deaths do issue a Birth Certificate in respect thereof.
2. The Applicants are Kenyan Citizens and married with full grown up children. They live in [particulars withheld] County. They are farmers and wish to adopt the minor who they are related to hence this is a Kinship Adoption as provided under Section 193 of the *Children Act*, 2022. The minor was born on 21st May, 2007 and they understand the legal implications of an adoption order which is not reversible.
 3. The biological parents APO (Minor's father) and PAO (Minor's mother) were also in Court and consented to the adoption proceedings by the Applicants and understood that the order is not reversible and relinquished their parental rights.
 4. The Applicants adopted their statement in support and averred that they would like to adopt the minor as they have desire to give love and affection to the child. They further averred that they have been meeting the child's need since she was put in their custody as they are in stable financial position to do so and they have adequate resources to continue taking care of the child. It's their statement that they have not only bonded well with the child but they extended family members including their biological children have also accepted the child into their family.
 5. It's the Applicants averment that they made an application to KKPI Adoption Society seeking to adopt the minor.
 6. The child herein (AA) the subject of the present adoption proceedings was born to APO and PAO Applicants' brother in law and sister in law. The minor is 17 years old having been born in 2007. She is in Form IV at [Particulars withheld] Secondary School. The minor was in online platform where she understood that she was in Court for adoption proceedings by the Applicants and subsequently consented to the adoption.
 7. This being a Kinship adoption, the Applicants made legally necessary applications to be allowed to adopt the child and meets the Kinship Adoption requirements. The minor's mother and father have sworn an affidavit dated 14th December, 2022 expressing their willingness for the process of this adoption to continue and to have the child adopted by the Applicants.
 8. Upon an assessment and approval by KKPI Adoption Society, consent from the minor's biological parents dated 14th December, 2022, the consent from the minor, as well as consent from the Applicants' biological children, the minor was declared free for adoption by the same Adoption Society Vide a Certificate of Freeing dated 29th June, 2022 this is Pursuant to Section 184 (1) of the *Children Act* Cap 141 of the Laws of Kenya.
 9. MKK, was appointed by this Court on 16th March, 2023 as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to investigate and file their respective reports.
 10. Pursuant to Section 102 of the *Children Act* 2022, EK Assistant Director, Children Services prepared and presented a favourable report dated 15th April, 2024 which was countersigned by Mary Atati Assistant Director, Children Services and stated that the child was interviewed and indicated her willingness to be adopted by the Applicants. Additional, the Applicants are financially stable and had proposed MOO to be appointed as legal guardian in case of eventuality thus recommends the adoption.



11. The proposed legal guardian, MOO (Applicants son) attended court and consented to the adoption proceedings. It was evidence from the Court that MOO (the Legal Guardian) consented to the Adoption order and he is prepared to assume parental responsibilities should circumstances require.
12. In addition, the Applicants are financially and emotionally capable of providing the child with care, protection and education. They have no criminal records as per the annexed Police Clearance Certificates PCC-R7T8OJRO and PCC-YLTV9LEZ. This Court has evaluated the facts of this adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
13. This Court observed the Applicants with the minor in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them.
14. After carefully assessing the records herein, I am satisfied that the Applicants have fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the *Children Act*, 2022 provides. The court may make an adoption order on application by-
 - (1)
 - (a) Sole applicant; or
 - (b) Two spouses jointly.
 - (2) The court shall not make an adoption order in any case unless-
 - i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - ii. The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
 - (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
16. This Court is alive to the Jurisdiction of the High Court vide Article 165 of the *Constitution* of Kenya 2010 and Section 183(1) *Children Act* 2022. The Court is conscious of the law; Article 53 Constitution of Kenya 2010, Section 8 of *Children Act* 2022 and the United Nations Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child all amplify on the best interests of the child.

Determination

17. Although Section 186 of *Children's Act* 2022 sub section (2) (i) stipulates the age requirements for the adoption proceedings, this being kinship adoption it would be in the best interest of the child to be adopted by the Applicants. Consequently, Adoption Society issued a Certificate freeing the minor for said adoption.
18. In conclusion. I allow the prayers sought in the Application dated 14th December,
19. 2022 and order as follows:
 - I. The Applicants PCO AND SAO are hereby allowed to adopt AA (A CHILD).
 - II. Her date of birth shall be 21st May, 2007.
 - III. She is presumed to be a citizen of Kenya by birth.



- IV. MOO shall be the Legal Guardian of the child.
- V. The Registrar General to enter this order in the Adoption Register.
- VI. The Director Immigration is authorized to issue the child with a Kenyan Passport.
- VII. The Guardian Ad litem is discharged.

It is so ordered.

DELIVERED DATED & SIGNED IN OPEN COURT ON 29TH NOVEMBER, 2024.

P. NYAUNDI

JUDGE

In presence of:

Fardosa Court Assistant

