



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby BS (Minor) (Adoption Cause E001 of 2021)
[2023] KEHC 3235 (KLR) (Family) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 3235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E001 OF 2021
EKO OGOLA, J
JANUARY 26, 2023
IN THE MATTER OF THE CHILDREN'S ACT, 2001
AND
IN THE MATTER OF THE ADOPTION OF BABY BS
(MINOR) AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION
JUDGMENT**

1. Before this court is the originating summons dated December 16, 2020 by which the applicants TMM and EWM seek the following orders: -
 - a. That the applicants be authorized to adopt baby BS to be known as BIWM.
 - b. That MWM be appointed as the legal guardian of the child in the event of the death or incapacity of the applicant before he is of full age and self-reliant.
 - c. That the Registrar general be directed to enter in the adopted children register an entry recording the adoption.
 - d. That the child be presumed to be a Kenyan citizen by birth.
 - e. That the court be pleased to make any further orders it deems necessary.
2. The originating summons was supported by a statement of even date sworn by the applicant. The matter was canvassed by way of viva voce evidence in open court.
3. The Applicant, TMM took the stand as PW1. He testified that he is married to EWM, and they have one biological son who is 15 years old. He works with [Particulars Withheld]. Baby BS has been in their care for 8 years and they have bonded with her. He PW1 testified that baby BS is enrolled in



- school. He is aware that the child will have the right to inherit his property. He testified that their desire to adopt a child is a way of giving back to society.
4. PW2 was EWM. She testified that she got married to TMM on December 7, 2007. She works at [particulars withheld].
 5. The Guardian ad litem, SMM took the stand as PW3 and testified that after his interaction with the child and the Applicants, he recommends the adoption.
 6. PW4 was CO, a children's officer from the Directorate of Children's Services. She testified that she assessed the child and recommends the adoption.
 7. PW5 was LMA, an officer of Change Trust Adoption Agency. She stated that baby BS was declared by Little Angels Adoption Agency free for adoption and approved the Applicants to adopt the child. She confirmed that the child has been in the care of the Applicants for 8 years. PW5 recommends the adoption.

Determination

8. I have considered the Summons before me, the evidence on record as well as the various reports filed in Court.
9. Baby BS was abandoned on April 22, 2014 in a bush near Mau Mau Bridge in Kawangware. She was estimated to be around two days old. She was rescued by a good Samaritan and reported to Muthangari Police Station. On that same day, she was placed at House of Charity Children's Home and on February 4, 2015 the Senior Resident Magistrate at Nairobi committed her into legal custody of the said Children's Home. Baby BS was declared free for adoption on March 27, 2015 under certificate No xxxxx. The child was then placed with the Applicants on October 7, 2015.
10. The prerequisites for adoption are set out in section 156(1) of the [Children Act, 2001](#) which stipulates as follows: -

“ 159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
11. At the time when this adoption process commenced, Baby BS was almost seven years of age which is above the six (6) weeks age limit provided for by law. Little Angel Network which is a registered Adoption Agency has annexed to their report a certificate declaring the child Free for Adoption. I am therefore satisfied that the legal prerequisites for an adoption order have been met.
12. The duty of this Court is to analyze the material before it to determine whether the Applicants are suitable adoptive parents. The Applicants are Kenyan citizens as evidenced by their copies of National Identify Card. The Applicants are also gainfully employed and can therefore sufficiently provide for Baby BS. They have annexed to the Summons copies of their bank statements as proof of their financial capability. The Applicants have also annexed copies of their Clearance Certificate issued by the Kenya Police Service as proof that they have no criminal record.
13. The Applicant has appointed MWM to be Baby BS's legal guardian in the event that the Applicants are unable or unavailable to provide for the child.
14. Finally, the Applicant's biological son and their extended family are supportive of the Adoption of Baby BS. From the material availed to this Court, I am satisfied that the Applicants are suitable adoptive parents.



15. Baby BS was abandoned when she was 2 days old. Article 14 of the Constitution deals with the question of Citizenship. Article 14(4) provides that: -

“(4) A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.”

16. I, therefore, declare Baby BS, a citizen of Kenya by birth.

17. Furthermore, in deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. Section 4(2) of the Children Act, 2001 stipulates as follows:-

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”

18. Baby BS was abandoned 2 days after she was born. This adoption allows her the opportunity to be raised in a stable and loving home environment. A home visit was conducted by the Children’s officer. The Applicants were reported to be living in a stable home environment.

19. I have considered the reports filed by the Adoption Society, the guardian ad litem, and the Children’s Services. All were positive and all recommended the adoption.

20. All in all, I find that this adoption does serve the best interests of the child. Accordingly, I do allow the originating summons dated December 16, 2020 and make the following orders:-

- a. The applicants, TMM and EWM are authorized to adopt the child known as Baby BS.
- b. Upon adoption, the child shall be known as BIWM.
- c. The child is declared to be a Kenyan Citizen by birth and is entitled to all rights and benefits under the Constitution of Kenya and all applicable laws.
- d. The guardian ad litem, SMM, is hereby discharged.
- e. MWM is hereby appointed as the legal guardian of the child.
- f. The Registrar General is directed to make the relevant entry in the Adopted Children Register.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JANUARY, 2023.

EK OGOLA

JUDGE

In the presence of:

Mr Kamenyu for the Applicants

Gisiele Muthoni Court Assistant.

