



**In re Baby ES (Adoption Cause E091 of 2022)
[2023] KEHC 109 (KLR) (Family) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 109 (KLR)

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

ADOPTION CAUSE E091 OF 2022

MA ODERO, J

JANUARY 20, 2023

IN THE MATTER OF

**FOO 1ST APPLICANT
SAO 2ND APPLICANT**

JUDGMENT

1. Before this court is the ex parte originating summons dated April 27, 2022 by which the applicants seeks the following orders:-
 1. That the applicants FOO and SAO be allowed to adopt the child currently identified as BABY ES.
 2. That henceforth, the child be renamed GZO.
 3. That the child's date and place of birth be declared to be April 20, 2021 at Athi River, Machakos county.
 4. That the child be presumed to be a Kenyan citizen by birth and consequently entitled to all the rights and benefits in respect thereof.
 5. That consent of the child's biological parents/guardian be dispensed with.
 6. That EAO be appointed as the legal Guardian, in the event that the applicants herein are incapacitated or in any way unable to discharge their parental obligations before the child is fully self-reliant.
 7. That the guardian ad litem be discharged.
 8. That the registrar general be directed to make the appropriate entries in the adopted register.



9. That he court do issue such further orders as are in the interest of justice.
2. The application was supported by statement of even date sworn by the applicants and was canvassed by way of *viva voce* evidence on the virtual platform.
3. The applicants FOO and SAO are couple who got married to each other in the 2021. Their union has not been blessed with any child. The couple now seek to adopt the subject child in order to complete their family.
4. The applicants both confirm that they fully understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to a biological child including the right of inheritance.

Analysis and Determination

5. The prerequisites which must be met before an adoption order can be made are set out in section 184 (1) (a) and (b) of the [Children's Act 2022](#) which provides as follows:-
 - (1) A person shall not commence any arrangements for the adoption of a child unless—
 - (a) the council, in accordance with the rules, has declared the child free for adoption; and
 - (b) the child has attained the age of six weeks.”
6. The subject child was born on April 20, 2021. A copy of her birth certificate serial no. xxxx is annexed to the summons (annexture ‘FO 20’). As such the child is now aged 1 ½ years old and is above the six (6) weeks age limit provided for in the law.
7. Buckner Kenya adoption society, which is a registered adoption agency, have annexed to their report dated June 14, 2022 the original copy of the certificate serial no. xxxx dated November 30, 2021 declaring the child free for adoption. In the circumstances, I find that the legal prerequisites for adoption order have been met.
8. The duty of this court is to analyze the evidence and material presented before it to determine whether the applicants are suitable adoptive parents. The applicants are both Kenyan citizens as proved by the annexed copies of their identity cards (Annextures ‘FO4A’ and FO 4b’)
9. The applicants are couple who initially got married to each other under Luo customary law in the year 2011. The couple later solemnized their union through a civil marriage conducted on October 22, 2021 at the registrar’s office in Nairobi. A copy of their marriage certificate serial number xxxx appears as annexture ‘FO 5A’ to the summons.
10. The applicants marriage has not been blessed with any child hence their desire to adopt a child.
11. The applicants are both financially secure. The 1st applicant works as an accountant with the Nairobi securities exchange. The 2nd applicant is a trained nurse but is currently a homemaker.
12. The applicant has annexed copies of his payslips (annexture ‘FO-8’) as well as copies of a statement of accounts for a bank account held by the 1st applicant with Development Bank of Kenya Ltd (annexture ‘FO 9A’). The couple also owns rental properties in Nairobi and Kisumu. They have annexed a copy of a title deed (annexture ‘FO 9B’). The couple realize a monthly income of approximately Kshs 500,000 which is more than adequate to provide for the needs of the child.



13. The applicants are both christians and intend to raise the child in the christian faith. They have annexed a recommendation letter dated February 17, 2021 written by Reverend EA of Holy Grounds Fellowship Church.
14. The applicants were both examined by a doctor and were found to be physically and mentally fit. They have each annexed a copy of a clearance certificate issued by to them by the directorate of criminal investigations (annexures '11a and '11b) proving that neither has a criminal record.
15. The applicants told the court that their extended family are aware of and support the intention to adopt the subject child. They have appointed the sister of the 1st applicant as the legal guardian for the child. The said legal guardian EAO has signed an affidavit dated April 26, 2022 annexure 'FO 13A' as well as a consent dated February 17, 2021 (annexture 'FO 13B') confirming her willingness to be appointed as the legal guardian for the child.
16. Based on the evidence availed to this court, I am satisfied that the applicants are both suitable adoptive parents.
17. The subject child is a girl child who was abandoned aged only five (5) days old at Komorock village on April 25, 2021 Good Samaritans rescued the baby and took her to Kinanie hospital for medical attention. The abandonment was reported at Athi River police station vide OB Number x of xxth April 2021
18. On April 29, 2021 the Mavoko children court committed the baby to Mahali Pa Maisha Infant Rescue Centre for care and protection. On December 17, 2021 the child was placed into the custody of the applicants under a foster care agreement.
19. Article 14 (4) of the *Constitution of Kenya 2010* provides that:-

“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 of Kenya.”
20. The subject child was found abandoned at the age of five (5) days in Komorock village, Athi River within the Republic of Kenya. She is therefore presumed be a Kenyan citizen by birth.
21. Efforts by police to trace the biological mother of the child have borne no fruit. To date no person has come forward to claim the child. A final police letter dated November 2, 2021 (Annexture 'FO 30') is annexed to the summons.
22. Given that the subject child was abandoned at birth there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 187(1) of the *Children's Act 2022*.
23. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the *Children Act 2022* provides:-

“(8). (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;” (own emphasis)



24. This was a child who was abandoned five (5) days after her birth. She faced an uncertain future living in various childrens Homes and other similar institutions. This adoption accords the child the right to be raised in a stable and loving home environment.
25. The child has lived with the applicants for one (1) year. She has bonded with them and views the applicants as her parents. I was able to see the child online. She was a healthy happy toddler and was comfortable sitting on the lap of the 1st applicant.
26. I have perused the reports prepared by the adoption agency, the guardian *ad litem* and the director of children services. All were positive and all recommend the adoption.
27. Finally I am satisfied that this adoption will serve the best interest of the subject child. I therefore allow this application and make the following orders:-
 1. The applicants FOO and SAO, are authorized to adopt the child known as BABY ES.
 2. Upon adoption the child shall be known as GZO.
 3. The child is presumed to be a Kenyan citizen by birth and is entitled to all rights and privileges pursuant thereto.
 4. The registrar general is directed to make relevant entry in the adopted children register.
 5. EAO is hereby appointed as legal guardian of the child.

DATED IN NAIROBI THIS 20TH DAY OF JANUARY, 2023.

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MAUREEN A. ODERO

JUDGE

