



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re BZ (Child) (Adoption Cause E095 of 2022)  
[2023] KEHC 141 (KLR) (Family) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 141 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E095 OF 2022**

**MA ODERO, J**

**JANUARY 20, 2023**

**IN THE MATTER OF ADOPTION OF**

**BZ ALIAS AB ALIAS UPN ALIAS**

**APN**

**IN THE MATTER OF**

**MMS ..... APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated 13<sup>th</sup> June 2022 by which the Applicant seeks the following orders:-

- “1. Spent
2. Spent
3. That the Applicant be authorized to adopt the child BZ alias AB alias UPN alias APN to be known as ZZK.
4. That the child be presumed a Kenyan citizen by birth.
5. That the child's birth be 4<sup>th</sup> July 2020 and the place of birth be Thika Level 5 Hospital.
6. That the Registrar General be directed to enter the adoption in the Adopted Children register.
7. That the Director Immigration be authorized to issue the child with a Kenyan Passport.



8. That my sister AKS be appointed the legal guardian of the child in event of the death or incapacity of the Applicant before the child is of age or independent or self-reliant.
9. That the court be pleased to make any further orders it deems necessary.”
2. The application was supported by the statement of even date sworn by the Applicant. The matter was canvassed by way of viva voce evidence on the virtual platform.
3. The Applicant MMS is a single woman who has never been married and has no biological child. She wishes to adopt the subject child in order to have a family of her own.
4. The Applicant confirmed that she fully understands the legal implications of an adoption order. She undertakes to accord to the subject child all the rights due to a biological child including the right to inherit.

### **Analysis and Determination**

5. I have considered this application, the Reports filed in court as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in Section 184 (1) of the [Children Act 2022](#) which provides –
  - “ 184(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.
    - (b) the child has attained the age of six weeks.”
6. The subject child was born on 4<sup>th</sup> July 2020. A copy of her birth Certificate Serial No. xxxx is annexed to the summons (Annexure ‘MM5-1’). The child is now aged 2 ½ years and is well above the six (6) week age limited provided for in the law.
7. Change Trust a registered Adoption Agency have annexed to their report a copy of their Certificate Serial No. xxxx dated 30<sup>th</sup> April 2021 declaring the Subject child Free for Adoption. I therefore find that all the legal prerequisites for an adoption order have been met.
8. The duty of this court is to analyze the evidence on record to determine whether the applicant is suitable adoptive parent.
9. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identify card which is annexed to the summons (Annexure ‘MMS-5’). The Applicant has never been married and has no biological child. She has opted for adoption as a means to fulfil her desire to have a child of her own.
10. The Applicant works for [Particulars Withheld] as the Head of Digital Retail. She has annexed a copy of her payslip (Annexure ‘MMS-8’) as proof of her employment. The Applicant also owns a piece of land in Kajiado County. I am satisfied that the Applicant is financially stable and is able to provide for the needs of a young child.
11. The Applicant is a Muslim and intends to raise the child in the Muslim faith. She was examined by a doctor and found to be in good health.
12. Additionally, the Applicant has also annexed the summons of a copy of clearance certificate issued by the Directorate of Criminal Investigations which proves that she has no criminal record (Annexure ‘MMS-10’).



13. The Applicant told the court that her family members are aware of and support her intention to adopt the subject child. She has appointed her sister as legal guardian for the child. The proposed legal guardian AKS has signed a consent dated 23<sup>rd</sup> August 2018 confirming her willingness to be appointed as legal guardian of the child.
14. Based on the evidence on record, I am satisfied that the Applicant is a suitable adoptive parent.
15. The subject child was born at the Thika Level 5 Hospital on 4<sup>th</sup> July 2020. The child was abandoned at birth at the post-natal unit of the hospital. The hospital staff made efforts to trace the child's biological mother but were unable to find her. The abandonment was then reported at Thika Police Station vide OB No. xxxx.
16. On 27<sup>th</sup> July 2020 the Thika Childrens Court committed the child to New Life Home Trust for care and attention. Thereafter on 27<sup>th</sup> May 2021 the child was released into the custody of the Applicant under a Foster Care Agreement.
17. 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.”
18. The subject child was abandoned in hospital in Thika Kiambu County in the Republic of Kenya. The child is therefore presumed to be a citizen of Kenya by birth.
19. Efforts by the police to trace the biological mother and/or relatives of the child have been unsuccessful. To date no person has come forward to claim the child. A final Police letter dated 16<sup>th</sup> March 2021 is annexed to the summons.
20. Given the fact of her abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. In circumstances, I do waive the requirement for consent in line with Section 187(1) of the Children's Act 2022.
21. 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)
22. The is a child who was abandoned upon birth. She faced uncertain future living in various childrens homes and other similar institutions. This adoption accords the child the opportunity to be raised in a loving and stable home environment.
23. The subject child has lived with the Applicant for the past year. The child has bonded with the Applicant as this is the only family she knows. I was able to see the child online. She was a healthy happy boisterous toddler who was obviously at ease in the company of the Applicant.
24. A Home visit was conducted on 2<sup>nd</sup> September 2022. The Applicant lives in a spacious three bedroomed Apartment in Embakasi. The Apartment is located within a secure compound and is close to several amenities like, schools, hospitals, mosques, shopping malls etc. The Applicant has engaged a Nanny to assist her in caring for the child. The environment was found to be suitable for raising a child.



25. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director of Children Services. All three reports were positive and all recommend the adoption.
26. 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 Applicant MMS is authorized to adopt the child known as BZZ alias AB alias UPN alias APN.
  2. Upon adoption the child will be known as ZZK.
  3. The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and privileges pursuant thereto.
  3. The Registrar-General is directed to make the relevant entry in the Adopted Childrens Register.
  4. AKS is appointed as the legal guardian for the child.

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

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**MAUREEN A. ODERO**

**JUDGE**

