



REPUBLIC OF KENYA



KENYA LAW
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**In re SB (Child) (Adoption Cause E055 of 2022)
[2023] KEHC 130 (KLR) (Family) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 130 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E055 OF 2022
MA ODERO, J
JANUARY 20, 2023**

IN THE MATTER OF

**KAA 1ST APPLICANT
BMOO 2ND APPLICANT**

JUDGMENT

1. Before this court is the originating summons dated April 14, 2022 by which the applicants seek the following orders:-
 - “ 1. That KAA & BMOOA of Kenyan National Identity Card Numbers xxxx and xxxx respectively be authorized to adopt the child SB who is a Kenyan citizen presumed to be born on July 10, 2020.
 2. That upon adoption the child be known as EBO
 3. That EOKO & EAOK of Kenyan National Identity Card Numbers xxxx & xxxx respectively be appointed as the legal guardian of the child SB.
 4. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate do issue by the Registrar of Births and Deaths.
 5. That the Director of immigration be authorized to issue the child SB with a Kenyan Passport.
2. The application was supported by the statement of even date sworn by the applicants. The matter was canvassed by way of *viva voce* evidence on the virtual platform.



3. The applicants KAA & BMOO are a couple who got married to each other in the year 2011. Their union has not been blessed with any child. They seek to adopt a child in order to complete their family.
4. The applicants both confirm that they understand the legal implications of an adoption order. They undertake 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 is believed to have been born on July 10, 2020. He is therefore now aged 2 ½ years and is above the six (6) week age limited provided for in the law.
7. Kenya Childrens Home Adoption Society which is a registered adoption agency have annexed to their report dated June 3, 2022 the original copy of their Certificate Serial No xxxx dated October 27, 2021 declaring the subject child free for adoption. I am therefore satisfied 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 applicants are suitable adoptive parents. The applicants are Kenyan citizens as evidenced by the copies of their National Identity Cards which are annexed to the summons (annexture ‘KMO-1’).
9. The applicants are a married couple who solemnized their union at the Nairobi Pentecostal Church on October 15, 2022. A copy of their marriage certificate Serial Number xxxx is annexed to the summons (Annexture ‘KMO-2’). The couple have no biological child of their own. They now wish to adopt the subject child in order to complete their family as well as to provide a needy child with a home.
10. The applicants are both gainfully employed. The 1st applicant works as an environmentalist with the [Particulars Withheld]. She has annexed to the summons a copy of her payslip (annexture ‘KMO-3’). The 2nd applicant who is a plant pathologist is currently undertaking his doctorate studies and earns income from rental property.
11. The couple have annexed to the summons (annexture) copies of a bank statement for an account held with the Co-operative Bank of Kenya as well as a copy of a title deed (annexture ‘KMO-3’) for a property in Kisumu owned by the 2nd applicant. The applicants realize a joint monthly income of approximately Kshs 250,000 which is sufficient to enable them provide for the needs of a growing child. I am satisfied that the applicants are financially secure.
12. The applicants are both committed christians and intend to raise the child in the christian faith. Annexed to the summons is a copy of a letter of recommendation dated June 27, 2021 written by Pastor Pauline Maina of CITAM Ministries Karen.



13. The applicants were both examined by a doctor and were found to be both mentally and physically fit. They have each annexed a copy of clearance certificate issued by the Directorate of Criminal Investigations confirming that neither has a criminal record (annexture 'KMO-7')
14. The applicants informed the court that their extended family are aware of and support their intention to adopt the subject child. They have appointed as legal guardian for the child a couple who are their close friends. The proposed legal guardians are EOKO and EAOK have each signed a consent dated July 3, 2021 and have sworn an affidavit dated April 14, 2022 confirming their willingness to be appointed as legal guardians for the subject child
15. From the evidence availed to this court I am satisfied that the applicants are suitable adoptive parents.
16. The subject child was born prematurely on July 10, 2020. The child was found abandoned with his twin brother in the County Council area of Naivasha Town. The abandonment was reported at Naivasha Police Station *vide* OB Number xx of July 10, 2020. The baby was taken to Naivasha County Referral Hospital for medical attention.
17. Later on September 11, 2020 the Naivasha Childrens Court committed the child to Limuru Childrens Centre for care and attention. On November 18, 2022 the child was released to the custody of the applicants under a Foster Care Agreement.
18. 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”
19. The subject child was found abandoned immediately after birth in Naivasha Town within the Republic of Kenya. Accordingly, the child is presumed to be a citizen of Kenya by birth.
20. Efforts made to trace the biological mother of the child have been unsuccessful. To date no person has come forward to claim the child. The final police letter dated October 15, 2021, is annexed to the summons (annexure 'KMO-6').
21. Given the fact of his 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.
22. 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) In all actions concerning children, whether undertaken by public or
(1) 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)
23. This is a child who was abandoned at birth. He faced uncertain future living in various homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.



24. The child has lived with the applicants in their home since November 2021. I have no doubt he has bonded with the applicants as they are the only parents he recognizes. I was able to see the child on line. He was a healthy, cheerful toddler and was engrossed in playing with his twin brother.
25. A Home visit was conducted by the Childrens Officer. The applicants reside in a rental house in Langata NHC Estate. Their home is a three bedroomed house, which is located in a secure compound and is close to social amenities like schools, hospitals, churches and shopping malls. The house was found to be spacious and well furnished and a suitable environment for raising a child. The applicants have employed a nanny to assist in the care for the child.
26. I have perused the reports prepared by the Adoption Agency, *Guardian Ad Litem* and Director of Children Services. All were positive and all recommend the adoption.
27. In conclusion I am satisfied that this adoption will serve the best interest of the child. Accordingly, I therefore allow this application and make the following orders:-
 1. The applicants KAA & BMOO are authorized to adopt the child known as SB.
 2. Upon adoption the child will be known as EBO.
 3. The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and privileges pursuant thereto.
 4. The Registrar-General is directed to make the relevant entry in the Adopted Childrens Register.
 5. That EOKO and EAOK are appointed as the legal guardians for the child.

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

MAUREEN A. ODERO

JUDGE

