



**In re AN (Child) (Adoption Cause 168 of 2019)
[2023] KEHC 3045 (KLR) (Family) (19 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 3045 (KLR)

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

FAMILY

ADOPTION CAUSE 168 OF 2019

EKO OGOLA, J

JANUARY 19, 2023

IN THE MATTER OF THE CHILDREN'S ACT, 2001

AND

**IN THE MATTER OF AN APPLICATION BY
HBA BABY AN FOR AN ORDER OF ADOPTION**

AND

IN THE MATTER OF BABY AN (THE CHILD)

IN THE MATTER OF

HBA APPLICANT

JUDGMENT

1. Before this court is the originating summons dated November 28, 2019 by which the applicant HBA seeks the following orders: -
 1. Pursuant to article 14 (4) of the *Constitution of Kenya, 2010* and Section 11 of the *Children Act, 2001*, this Honorable Court be pleased to declare that the Child, Baby AN a Kenyan Citizen by birth;
 2. Pursuant to the provisions of Section 159 of the *Children Act, 2001*, this Honorable Court be pleased to dispense with the requirements of Consent to the Adoption as required by the provisions of Section 158 of the *Children Act, 2001*.
 3. The applicant, HBA, be authorized to adopt baby AN (the child)
 4. Upon making the Adoption Order, the child be known as HMA



5. Upon the making of the Adoption Order, AKA be appointed as the legal guardian of the child as provided for by the provisions of section 164 of the *Children Act, 2001*
 6. Upon the making of the adoption order, the Registrar-General do make an entry recording the adoption and the estimated date of birth of the child as August 27, 2015 in the Adopted Children Register as provide for by Section 170 of the *Children Act, 2001*
 7. The costs of this Application be in the cause
2. The Summons was supported by the statement of even date sworn by the applicant and an Affidavit in support. The matter was canvassed by way of *viva voce* evidence in open court.
 3. PW1 was AKA , a sister to the Applicant. She testified that she has been appointed the Legal Guardian for the Child. She has of her own will agreed to be the child’s legal guardian.
 4. PW2 was MM , the *guardian ad litem* and a childhood friend to the Applicant. She testified that she has known the Applicant for over twenty (20) years. She has also known the child since she was released to the Applicant. She approved of the adoption.
 5. PW3 was the Applicant herein HBA. She testified that she is not married and has no children of her own. She has been with the child since June 8, 2018 when the child was 10 months old. The child is now 5years and 10 months old. The Applicant understands that adoption is a lifetime commitment. She indicated she is in a well-paying job where she earns enough to take care of the needs of the child. She prayed that the application for adoption be allowed.

Determination

6. I have carefully considered this application for adoption the various Affidavits and Reports on record as well as the relevant law. I have also considered the evidence adduced in open court. The preliminary requirements for the making of an Adoption Order are set out in Section 156(1) of the *Children Act 2001* which provides as follows: -
 - “ 159 No arrangement shall be commenced for the adoption of a child unless the
 - (1) 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.”
7. The subject child was born on August 27, 2017 as evidenced by the birth certificate serial number 771xxxx annexed at page 4 of the bundle of documents. The child is now about five (5) years three (3) months old well above the six (6) week age limit provided for in law. The Child was given up for adoption at birth by her mother one Ms JWN . Her reason for giving up the child was lack of support from the father and her incapability to support the child. The Acknowledgement dated August 27, 2017 and the consent to give up a child for adoption dated April 10, 2018 are annexed from pages 5 to 6.
8. The child was placed at The Nest Children’s Home on October 27, 2017. Thereafter Nairobi Children’s Court committed the child to same children’s home on November 3, 2017. The child was declared free for Adoption as per the Certificate Serial Number 00xxxx issued by Little Angels Network on March 9, 2018. On June 8, 2018 the child was released into the custody of the Applicant under a Foster Care Agreement. The legal pre-requisites for an adoption order have accordingly been met.
9. The duty of this Court is to analyze the material placed before it and make a determination as to whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen. Her copy of National Identity Card is at page14 of the bundle of documents.



10. The Applicant is engaged in gainful employment working as an Administrator in a Law Firm in Nairobi where she earns a net salary of over Kshs 35,000/- per month. In addition, she owns a parcel of land in Taveta. The report by the *guardian ad litem* states that the Applicant is financially stable and in a good position to provide for the needs of the child.
11. The Applicant was examined and found to be physically and mentally fit. She has provided a medical report annexed the bundle of documents. The Applicant has also annexed at page 15 a copy of her Certificate of Good Conduct issued by the Kenya Police Service which prove she has no criminal antecedents.
12. The Applicant has appointed her sister AKA as a Legal Guardian of the child. She has signed a consent dated November 28, 2019. The letter of consent, and the copy of her Identity Card has been provided.
13. Based on the foregoing I am satisfied that the applicant is a suitable adoptive parent.
14. Article 14 of the [Constitution of Kenya 2010](#) deals with issue of Citizenship. Article 14(4) provides as follows:
 - (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.”
15. The subject child was given up for adoption by her birth mother who is a Kenyan Citizen. The Child is therefore a Kenyan Citizen.
16. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. Section 44(2) of the [Children Act 2001](#) provides: -
 - “(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”.
17. The child has lived with the Applicant in her home since she was about ten (10) months old up to the present date. There is no doubt that the child has bonded with the Applicant and considers her as her mother.
18. The Court was able to see the Child, she appeared comfortable in the presence of the Applicant, they noticeably have a close bond.
19. The various reports filed in court all recommend the adoption. I am satisfied that the adoption will serve the best interests of the subject child. Accordingly, I allow this application and make the following orders: -
 1. The applicant HBA is authorized to adopt the child known as Baby AN .
 2. Upon adoption the child will be known as HMA
 3. The child is declared Kenyan Citizen by birth and is entitled to all the rights and liberties due to a citizen of Kenya.
 4. The Registrar General is directed to make appropriate entries in the Adopted Children’s Register
 5. AKA is appointed as Legal Guardian of the child.



It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JANUARY 2023.

E.K. OGOLA

JUDGE

Judgment read and delivered online in the presence of:

M/s. Onyiego for the Applicant

Ms. Gisiele Court Assistant

