



**In re UAB aka WJ aka TB (Adoption Cause E120 of 2022)
[2023] KEHC 1545 (KLR) (Family) (24 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1545 (KLR)

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

ADOPTION CAUSE E120 OF 2022

MA ODERO, J

FEBRUARY 24, 2023

IN THE MATTER OF ADOPTION OF UAB AKA WJ AKA TB

IN THE MATTER OF

DAA 1ST APPLICANT

HJ 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated 22nd July 2022 by which the Applicants DAA and HJ seeks the following orders:-

- “ 1. That the Applicants be and are hereby authorized to adopt the child currently known as UAB aka WJ.
2. That if the adoption order is granted the said child is thereafter known as TBA.
3. That the child’s date of birth be declared to be 1st July 2021 and his place of birth to be declared to be Nakuru Level 5 Hospital, Nakuru County.
4. That the consent of the biological parents of the child be and is hereby dispensed with since he was abandoned.
5. That SBA and PAN may be appointed the legal guardians of the child in the event of death of the Applicants or incapacity of the Applicants, rendering them un-available or incapable of taking care of the child.
6. That the Registrar-General be directed to make the appropriate entries in the Adopted Children’s Register.



8. That the child be declared a Kenyan Citizen.”
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 are a couple who got married to each other in December 2015. Their union has not been blessed with any issue. The couple now wish to adopt the subject child in order to complete their family and to provide a needy child with a home.
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 1st July 2021. He is now aged 1 ½ years old 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 the original copy of their Certificate Serial No xxxx declaring the Subject child Free for Adoption. I am 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 both citizens of Kenya as evidenced by the annexed copies of their National Identity cards (Annexures ‘HJ 3 (a)’ and ‘HJ 3(b)’).
9. The Applicants got married to each other on 5th December 2015. A copy of their Marriage Certificate Serial No. xxxx is annexed to the summons (Annexure HJ ‘5’). The couple do not have a biological child together. They now wish to adopt a child in order to complete their family.
10. The Applicants are both in gainful employment. The 1st Applicant works as a salesman with ABSA BANK. He has annexed copies of his payslip. The 2nd Applicant is a business woman and works from home. The Applicants have annexed copies of a Bank Statement for an account held with ABSA BANK. The couple jointly realize a monthly income of approximately Kshs 100,000, which is sufficient to provide for the needs of the child. The couple also own a piece of land in Komorock.
11. The Applicants are both Christians and intend to raise the child in the Christian faith. Annexed to the summons is a recommendation letter dated 6th October 2021 written by Apostle PM of [Particulars Withheld] Ministries where the Applicants worship.
12. The Applicants were both examined by a doctor and were found to be both mentally and physically fit. They have annexed copies of Clearance Certificates issued to them by the Directorate of Criminal Investigations proving that neither has a criminal record. (Annexure ‘HJ 6 (a)’ and ‘HJ 6 (b)’).



13. The Applicants told the court that their extended families are aware of and support their intention to adopt the subject child. They have nominated the 1st Applicants brother and sister-in-law as the legal Guardians for the child. The proposed legal Guardians SBA and PAN have signed a consent dated 22nd January 2023 indicating their willingness to act as legal Guardians.
14. All in all, I am satisfied that the Applicants are suitable adoptive parents.
15. The subject child is believed to have been born on 1st July 2021. The child was abandoned at birth in Nakuru County. A local herdsman rescued the child and called police who were on patrol nearby. The abandonment was reported at Baraka Police Patrol Base vide OB Number xxxx of 2nd July 2021. The baby was then rushed to Nakuru Level 5 Hospital where he was admitted for treatment.
16. Thereafter on 30th July 2021 the Nakuru Childrens Court committed the child to New Life Home in Nakuru for care and protection. On 22nd April 2022 the child was released to the custody of the Applicants 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. This is a child who was abandoned in Nakuru County within the Republic of Kenya. He is therefore presumed to be a citizen of Kenya by birth.
19. Efforts by police to trace he biological mother/relatives of the child have born no fruit. To date no person has come forward to claim the child. The Final Police Letter dated 30th February 2022 is annexed to the summons.
20. Given the fact of his abandonment, 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.
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. This is a child who was abandoned at birth. He faced an uncertain future living in childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.
23. The subject child has lived with the Applicants in their home since April 2022. He has bonded with the Applicants and they are the only family the child knows. I was able to see the child online. He was a cheerful heathy toddler who was obviously comfortable in the company of the applicants.
24. A Home visit was conducted by the childrens officer. The Applicants reside in a one bedroomed house along Kangundo Road. The house was in a secure fenced compound and was supplied with both water and electricity. The environment was found to be conducive for raising a young child.



25. I have carefully perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director of Children Services. All three reports were valid and all recommend the adoption.
26. In conclusion, I find that this adoption will serve the best interest of the child in question. Accordingly, I hereby allow the application and make the following orders:-
 1. The Applicants DAA and HJ are authorized to adopt the child known as Unknown African Boy aka WJ.
 2. Upon adoption the child will be known as TBA.
 3. The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and privileges in respect thereof.
 4. The Registrar-General is directed to make the relevant entry in the Adopted Childrens Register.
 5. SBA and PAN is appointed as the legal guardian for the child.

DATED IN NAIROBI THIS 24TH DAY OF FEBRUARY, 2023.

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MAUREEN A. ODERO

JUDGE

