



**In re Baby L aka BK (Child) (Adoption Cause E002 of 2022)
[2023] KEHC 3895 (KLR) (Family) (31 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E002 OF 2022
MA ODERO, J
MARCH 31, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY L AKA BK (CHILD)
BY**

**IN THE MATTER OF
MCR APPLICANT**

JUDGMENT

1. Before this court is the originating summons dated January 13, 2022 by which the Applicant MCR seeks the following orders:-
 - “ 1. That the Applicant be authorized to adopt BABY L aka BK a minor who is to be known as MICR and the Registrar General be directed to enter this adoption in the Register of Adoptions.
 2. That ECR and AB be appointed as the legal Guardians of the minor presumed to have been born in Kenya.
2. The Application was supported by the statement of the Applicant. The Application was canvassed by way of *vive voce* evidence on the virtual platform.
3. The Applicant is a single woman who has no biological child of her own. She seeks to adopt the subject child in order to fulfil her lifelong desire to have a child to call her own.



4. The Applicant confirms that she understands the legal implications of an adoption order. She undertakes to accord to the subject child all rights due to a biological child including the right to inherit.

Analysis and Determination

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act* 2022: -
 - “(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.”
7. The subject child was born at the Pumwani Maternity Hospital on July 15, 2016. A copy of the Birth Notification Serial Number 0241XXX is annexed at Page 46 of the summons. Therefore the child is now aged about seven (7) years old and is well above the six (6) week age limit provided for in law.
8. Child Welfare Society Of Kenya which is a registered Adoption Society have annexed to their report the original copy of their certificate serial number 0971 dated October 3, 2017 declaring the child Free For Adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identity Card which is annexed at Pages 1 to 2 of the summons.
10. The Applicant told the court that she got married to one AAA in the year 2015. However the couple separated in the year 2020 and the Applicant has been living alone ever since. The Applicant is unable to have children of her own due to medical complications. She seeks to adopt a child in order to fulfill her desire to have a child to call her own.
11. The Applicant commenced these adoption proceedings in the year 2014 before she got married, as a single Applicant. Upon getting married the Applicant's husband gave his consent to the adoption *vide* the consent dated September 27, 2017 (see Pages 8 to 9 of the summons).
12. The Applicant is gainfully employed as a Project Officer with Research Triangle Institute (RTI). She has annexed a copy of her employment contract (Page 11). The Applicant earns a monthly salary of approximately Kshs 400,000/= which is sufficient to enable her provide for the needs of the child.
13. The Applicant is a Muslim and intends to raise the child in the Muslim faith. She has annexed a copy of a recommendation letter from the Assistant Imam of South 'B' Mosque where the Applicant worships (Page 16 of the summons).
14. The Applicant was examined by a Doctor and was found to be both mentally and physically fit. She has annexed a copy of a clearance certificate issued by the Directorate of Criminal Investigations proving that the Applicant has no criminal record (Page 17 of the summons).
15. The Applicant told the court that her family are aware of and support her intention to adopt the subject child. She has appointed her sister and brother-in-law as the legal guardians for the child. The



proposed legal guardians ECR and AB have both signed a consent dated January 13, 2022 confirming their willingness to act as the legal guardianship for the child.

16. All in all I am satisfied that the Applicant is a suitable adoptive parent.
17. The subject child is a girl child who was born on July 15, 2016. The child's biological mother whose name was given as BK abandoned the baby at the Pumwani Maternity Hospital on August 5, 2016. The abandonment was reported at the Shauri Moyo Police Station *vide* OB Number 24 of October 12, 2016. Thereafter the Nairobi Children's Court on April 26, 2017 committed the child to the Mama Ngina children's Home for Care and Protection. On October 11, 2017 the child was released into the custody of the Applicant under a Foster Care Agreement.
18. Article 14 (4) of the Constitution of Kenya 2010 provides that: -

“(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.”
19. Since the subject child was born in the Republic of Kenya she is declared to be a Kenyan citizen by birth.
20. Efforts to trace the biological mother of the child have been unsuccessful. To date no person has come forward to claim the child. CWSK made effort by placing details of the child in the Daily Newspapers on three (3) different occasions. (Pages 35-37 of the summons) still nobody claimed the child. A final Police letter was issued on July 18, 2017.
21. Given the fact of the child's 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)(as) of the Children 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). (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)
23. This is a child who was abandoned shortly after her birth. The child's mother was unable and/or unwilling to take care of her child. The child faced an uncertain future living in various children's homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment.
24. The child has lived with the Applicant since October 2017 to date – a period of close to six (6) years. I have no doubt that the child has bonded with the Applicant whom she views as her mother.
25. I was able to see the child online. She was a healthy happy young girl who cheerfully answered the questions put to her by the court. The child confirmed that she goes to school.
26. A home visit was conducted by the children officer. The Applicant resides in a two bed-roomed house in South 'B'. The home was in a safe environment and had all the facilities required by a child. It was found to be a suitable environment for the child.
27. I have carefully perused the reports filed by the Adoption Agency, the Guardian Ad litem and the Director Children's Services. All three (3) reports were positive and all recommended the adoption.



28. In conclusion I find that this adoption does serve the best interest of the subject child. Accordingly I allow this application and make the following orders:-

- (1) The Applicant MCR is authorized to adopt the child known as BABY L aka BK.
- (2) Upon adoption the child will be known as MICR.
- (3) The child is declared to be citizen by birth.
- (4) ECR and AB are appointed as the legal Guardians of the child.
- (5) The registrar General is directed to make the relevant entry in the Adopted Children's Register.

DATED IN NAIROBI THIS 31ST DAY OF MARCH 2023.

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MAUREEN A. ODERO

JUDGE

