



REPUBLIC OF KENYA



**In re Baby BGA (Child) (Adoption Cause E104 of 2022)
[2023] KEHC 3898 (KLR) (Family) (24 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3898 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E104 OF 2022
MA ODERO, J
APRIL 24, 2023
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY BGA (THE CHILD)**

IN THE MATTER OF

NOO 1ST APPLICANT

SNO 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated July 1, 2022 by which the Applicant NOO and SNO seeks the following orders:-

- ' 1 That the Applicants be and is hereby authorized to adopt BABY BGA, minor herein.
2. That upon Adoption, the child be known as BABY WZEO
3. That the Registrar General be ordered to make appropriate entries in the Adopted Children's Register in respect of BABY WZEO
3. That the court be pleased to appoint EOO and LA as the legal guardians of BABY WZEO upon granting of the adoption orders.
4. That BABY WZEO be considered a Kenyan Citizen.
5. That the court be pleased to make any further orders it deem necessary.'



2. The Application was supported by the Affidavit of even date sworn by the Applicants. The matter was canvassed by way of vive voce evidence on the virtual platform.
3. The Applicants are a couple who got married to each other in the year 2011. The couple have no biological children of their own. They now seek to adopt the subject child in order to expand 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 rights due to a biological child including the right of inheritance.

Analysis and Determination

5. The prerequisites which must be met before an adoption order can be made are set out in Section 184 (1) (a) and (b) of the Children's Act 2022 which provides as follows:-
 - ' (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.'
6. The subject child is a girl child who was born on July 31, 2020. She is therefore now aged two and a half (2 ½) years old and is above the six (6) week age limit provided for in law.
7. Buckner Kenya Adoption Services which is a registered Adoption Society have annexed to their report the original copy of their certificate Serial Number xxxx dated July 15, 2021 declaring the child Free For Adoption. Accordingly 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 (Exhibit No 1)
9. The Applicants are a married couple. They solemnized their union at St Stephens ACK Church [Particulars withheld] Road on September 10, 2011. A copy of their Marriage Certificate Serial Number xxxx appears as Exhibit No 2 to the summons.
10. The Applicants are both in gainful employment. The 1st Applicant is a Research Manager with the [Particulars withheld]. He has annexed a copy of payslip (Exhibit No 8) as evidence of his employment.
11. The 2nd Applicant is a Caterer and runs a restaurant. Together the couple realise a joint monthly income of over Kshs 100,000 which is sufficient to provide for the needs of the child. They have annexed copies of bank statements for an account held with Standard Chartered Bank. I am satisfied that the Applicants are financially stable.
12. The Applicants are both committed Christians and intend to raise the child in the Christian faith. They have annexed a copy of a letter of recommendation dated June 2, 2021 written by Rev PK, the [Particulars withheld] Parish – Ruai.



13. The Applicants were both examined by a doctor and were found to be both mentally and physically fit. They have annexed copies of Clearance Certificate issued to them by the Directorate of Criminal Investigations confirming that neither has a criminal record.
14. The Applicant state that their extended couple are aware of and support their intention to adopt the child. They have appointed as legal guardians the first cousin of the 1st Applicant and his wife. The proposed legal guardians EOO and LA have both signed consents dated May 1, 2022 confirming their willingness to act as the legal guardians for the child.
15. All in all I am satisfied that the Applicants are suitable adoptive parents.
16. The subject child was born on July 31, 2020 at [Particulars withheld] Hospital in Kisii County. The child's biological mother whose name was given as AK absconded from the hospital immediately after delivery leaving her baby behind. The mother never returned to collect her child.
17. The abandonment was reported at Igare Police Post vide OB Number xxx of August 1, 2020. Thereafter the [Particulars withheld] Childrens Court committed the child to [Particulars withheld] Children's Home for Care and Protection. On August 2, 2021 the child was released into 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. Effort to trace the biological mother/relative of the child have not borne any fruit. To date no person has come forward to claim the child. A final Police letter dated June 9, 2021 is annexed to the summons.
20. Given the fact of the child's abandonment there exist no known person from whom consent for the adoption can be sought and/or obtained. In the circumstances I waive the requirement for consent in line with Section 187 (1) (a) of the [Children 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). 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;'
22. This is a child who was abandoned at birth. She faced an uncertain future living in Children's Homes and other similar institutions. The adoption allows the child the opportunity to be raised in a loving and stable home environment.
23. The child has lived with the Applicants in their home for close to two (2) years. She has bonded with the Applicants who are the only family the child knows.
24. I was able to see the child online. She was a healthy calm toddler who was obviously at ease seated on the lap of the 2nd Applicant.
25. A home visit was undertaken by the Children's Officer. The Applicants reside in a rented two bed-roomed house in [Particulars withheld] Estate, Nairobi County. The house was found to have adequate



space and facilities and was in a secure compound. The Applicants have employed a Nanny to help in caring for the child.

26. I have carefully perused the reports filed by the Adoption Agency, the Guardian Ad Litem and the Director Children Services. All three reports were positive and all recommend the adoption.
27. Finally I am satisfied that this adoption does serve the best interests of the subject child. Accordingly I allow the application and make the following orders:-
 - (1) The Applicants NOO and SNO are authorized to adopt the child known as BABY BGA
 - (2) Upon adoption the child will be known as WZEO
 - (3) The Registrar – General is directed to make the relevant entry in the Adopted Childrens Register.
 - (4) EOO and LA are appointed as the Legal Guardians for the child.

DATED IN NAIROBI THIS 24TH DAY OF APRIL 2023.

.....

MAUREEN A. ODERO

JUDGE

