



**In re Baby HAB (Child) (Adoption Cause E145 of 2022)
[2023] KEHC 3896 (KLR) (Family) (24 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3896 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E145 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 HAB(THE CHILD)**

IN THE MATTER OF

**KM 1ST APPLICANT
HA 2ND APPLICANT**

JUDGMENT

1. Before this court is the Amended originating summons dated November 22, 2022 by which the applicants KM and HAM seek the following orders:-
 1. That the applicants herein KM and HAM be and are hereby authorized to adopt HAB (Minor).
 2. That QM be appointed as the legal guardian of the minor herein in the event of death or incapacity of the Applicants rendering them unavailable or incapable of taking care of the child.
 3. That the Registrar General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register in respect of the minor HAB.
2. The application was supported by statement 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 June 2021 the couple have no biological children together but the 2nd applicant came into the marriage with three (3) daughters. The 1st applicant wishes to adopt the child of the 2nd applicant in order to make her a full member of the 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 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 on August 5, 2015. A copy of her Birth certificate Serial Number xxxx is annexed to the summons (Annexure ‘HAM 1’). The child is therefore now aged Seven and a half (7½) years old and is well above the Six (6) week age limit provided for in law.
8. Change Trust which is a registered Adoption Agency have annexed to their report a copy of their certificate Serial Number xxxx dated February 11, 2022 declaring the child Free For Adoption. I am satisfied that the legal prerequisites for an adoption have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. The 1st applicant is a British citizen. A copy of the 1st applicant British Passport Serial Number xxxx appears at Page 14 on the summons. Whilst the 2nd applicant is a Kenyan citizen. The 2nd Applicant has annexed a copy of her Kenyan Passport Serial Number CKxxxx at page 52 of the summons.
10. The applicants are a couple who solemnized their union on June 2, 2021 at the Registrar’s office in Nairobi. A copy of the Marriage Certificate Serial Number xxxx is annexed to the summons (Annexure ‘HAM 3’).
11. The couple have not been blessed by any children of their own. However the 2nd applicant came into the Marriage with three (3) daughters one of whom is the subject child. The Applicants now wish to adopt the child in order to incorporate her fully into their new family.
12. The applicants are both gainfully employed. The 1st applicant is a Security Consultant employed by [Particulars withheld]. Annexed at page 103 of the summons is a letter dated October 11, 2022 written by the Area Operations manager of the Company confirming that the 1st applicant is their employee. A copy of his letter of employment is also annexed at page 101 of the summons. The 2nd applicant is a business woman earning approximately Kshs.50,000 per month. The 2nd applicant has annexed copies of her M-pesa statements (Pages 63-65 of the summons). Whilst the 1st applicant has annexed copies of his Bank statement for an account held with the Bank of Scotland (Pages 66-99 of the summons). The Applicants together realise a monthly income of approximately Kshs.500,000 which is sufficient to enable them provide for the needs of the child I am satisfied that the Applicants are financially stable.



13. The Applicants are both Christians and intend to raise the child in the Christian faith. They were both examined by a Doctor and were found to be both mentally and physically fit. The 1st Applicant has annexed a certificate of Basic Disclosure indicating that he has no previous convictions confirming whilst the 2nd applicant has annexed a clearance Certificate issued to her by the Directorate of Criminal Investigations as proof that she has no criminal record.
14. The Applicants stated that their families are aware of and support their intention to adopt the subject child. They have appointed the 2nd applicant's sister as the legal Guardian for the child. The proposed legal Guardian QM has signed a consent dated November 18, 2022 confirming her willingness to act as the legal guardian for the child. (Page 3 of the summons).
15. All in all I am satisfied that the applicants are suitable adoptive parents.
16. The subject child is a girl child who is aged about seven (7) years old. She is the biological child of the 2nd applicant. The child's father who is said to be a Nigerian citizen abandoned the 2nd applicant when the child was born and returned to his home country. The 2nd applicant told the court that the father has played no role in the life of the child and that she has no idea of his current whereabouts.
17. The 2nd applicant has therefore raised the child single handedly. Indeed the Nairobi Children's Court on March 12, 2021 granted the 2nd applicant Guardianship and sole legal and actual custody of the child. A copy of the relevant court orders Annexure 'HAM – 2' to the summons.
18. Given that the child's biological father abandoned the child and has played no role in her life I waive the requirement for the Father's consent in line with section 187 (1) (a) of the Children Act, 2022.
19. 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)
20. This is a kinship adoption which is provided for by section 193 of the Children Act 2022. The Applicants are persons who are well known to the child. The child will remain within the same family unit and will retain contact with her biological mother and her other blood relatives.
21. I was able to see the child online. She was a healthy cheerful little girl who smiled widely at the camera and readily answered the questions put to her by the court.
22. A home visit was conducted by the children officer. The family resides in a four bed-roomed house in [Particulars withheld] in Umoja Estate. The house is in a gated community in a well secured neighbourhood and was found to be a conducive environment for raising a young child.
23. I have carefully perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Children's Services. All three reports were positive and all recommended the adoption.
24. In conclusion I am satisfied that this adoption does serve the best interest of the subject child. Accordingly I do allow the application and make the following orders:-
 - (1) The Applicants KM and HAM are authorized to adopt the child known HAB.



- (2) Upon adoption the child will be known as HAB.
- (3) The Registrar-General is directed to make the relevant entry in the Adopted children's Register.
- (4) QM is appointed as the legal Guardian for the child.

DATED IN NAIROBI THIS 24TH DAY OF APRIL 2023.

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MAUREEN A. ODERO

JUDGE

