



**In re IB alias IB (Child) (Adoption Cause E073 of 2021)
[2023] KEHC 3625 (KLR) (Family) (24 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E073 OF 2021
MA ODERO, J
APRIL 24, 2023**

IN THE MATTER OF

ENM APPLICANT

JUDGMENT

1.

1. Before this court is the originating summons dated 1st July 2021 by which the Applicant ENM seeks the following:

- “ 1. Spent.
2. Spent.
3. That the Applicant be authorized to adopt IB alias IB to be known as IBM.
4. That the child be presumed a Kenyan citizen by birth.
5. That child’s date of birth be 10th October 2010 and the place of birth be Nairobi.
6. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
7. That the Director Immigration be authorized to issue the child with a Kenyan Passport.

2. The Application was supported by the statement of even date sworn by the Applicant. The matter was canvassed by way of *Vive Voce* evidence on the virtual platform.



3. The Applicant is a mature single lady. She has never been married and has no biological child of her own. The Applicant seeks to adopt the subject child out of her desire to have a child to call her own and to provide a needy child with a home.
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 carefully considered this application for adoption the evidence adduced in support thereof as well as the various reports filed in court. The prerequisites 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.”
6. The subject child is believed to have been born on 10th October 2010. The child is now aged twelve and a half (12½) years old and is well above the six (6) week age limit provided for by law.
7. Change Trust which is a registered adoption agency have annexed to their report a copy of their certificate serial number XXXX dated 1st November 2019 declaring the child Free For Adoption. I am therefore satisfied that 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 Applicant is a suitable adoptive parent.
9. The Applicant is a Kenyan citizen as proved by the annexed copy of her National Identity Card (Annexure ‘ENM-1’). The Applicant is a single woman who has never been married and has no biological children of her own. She now wishes to adopt a child in order to have a child to call her own and to have an heir.
10. The Applicant is a retired Nurse. She now is a business woman and own rental houses. She has annexed copies of her bank statements issued by Family Bank. The Applicant earns an income of approximately Kshs. 90,000 per month which is adequate to enable her provide for the needs of the child.
11. The Applicant is a committed Christian and intends to raise the child in the Christian faith. Annexed to the summons is a letter of recommendation written by Pastor Anthony of the P.E.F.A Church in Chokaa where the Applicant worships (Annexure ‘ENM-8’).
12. The Applicant was examined by a Doctor and was found to be both mentally and physically fit. A copy of her medical report appears as (Annexure ‘ENM-10’).
13. The Applicant has annexed a copy of the clearance certificate issued to her by the Directorate of Criminal Investigations(Annexure ‘ENM-11’) proving that she has no criminal record.
14. The Applicant told the court that her family are aware of and support her intention to adopt the subject child. The applicant has appointed her niece as the legal Guardian for the child. The proposed legal Guardian MWK has signed a consent dated 1st July 2021 confirming her willingness to act as the legal Guardian for the child. (Annexure ‘ENM-13’)



15. All in all I am satisfied that the Applicant is a suitable adoptive parent.
16. The subject child is a twelve (12) year old boy child who is believed to have been born on 10th October 2010. The child was abandoned in a church in Githurai on 9th October 2011 at the age of about one(1) year old. The abandonment was reported at Kasarani Police Station vide OB Number XX of 9th October 2011.
17. Thereafter on 18th June 2012 the Nairobi Children’s Court committed the child to Happy Life Children’s Home for care and protection. The child remained in institutionalized care until 29th November 2019 when he 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. The subject child was abandoned in the Githurai area of Nairobi County in the Republic of Kenya at the age of one (1) year. The child is therefore presumed to be a citizen of Kenya by birth.
20. Given the fact of the child’s abandonment there exists no person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with the 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). (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 as a toddler. Efforts made to trace the biological mother/relatives of the child have not been successful. The child has remained institutionalized for over six (6) years and nobody came forward to claim him. A final Police letter dated 22nd January 2013 appears as (Annexure ‘ENM-14’) to the summons.
23. This adoption provides the child to be raised in a stable and loving home environment. The child has lived with the Applicant for over three (3) years. He has bonded with the Applicant whom he views as his mother. I was able to see the child online. He was a healthy young boy who was smiling broadly at the camera and was obviously comfortable in the company of the Applicant. The child assured the court that he was very happy living with his mother.
24. “Section 186(8)(a) of the Children Act 2022 provides as follows:-
 - “(8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—



- (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
- (b) on the application of one of the spouses, the consent of the other spouse; and
- (c) in the case of a child who has attained the age of ten years, the child himself or herself.” [own emphasis]

25. The subject child has written a letter dated 4th April 2023 giving consent to his adoption by the Applicant. As such I am satisfied that Section 186 (c) of the Act has been complied with.

26. A Home visit was conducted on 15th March 2023. The applicant resides in a two bed-roomed house in Chokaa along Kangundo Road. The home environment was found to be conducive for raising a young child.

27. 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 recommend the adoption.

28. In conclusion I am satisfied that this adoption serves the best interests of the subject child. I therefore allow this application and make the following orders:-

- (1) The Applicant ENM is authorized to adopt the child known as IB alias IB.
- (2) Upon adoption the child will be known as IBM.
- (3) The child is presumed to be a citizen of Kenya by birth and is entitled to all the rights and privileges thereto.
- (4) The Registrar-General is directed to make the relevant entry in the Adopted Children’s Register.
- (5) MWK 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

