



**In re Baby AN (Child) (Adoption Cause E010 of 2023)
[2023] KEHC 18693 (KLR) (Family) (26 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18693 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E010 OF 2023
PM NYAUNDI, J
MAY 26, 2023
IN THE MATTER OF THE CHILDREN'S ACT NO. 29 OF 2022
IN THE MATTER OF BABY AN (THE CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY EBO**

JUDGMENT

1. Before the court is the originating summons dated December 8, 2022 by which the applicants seek the following orders:
 1. That the applicants be authorised to adopt the child; baby AN who is a Kenyan citizen born on the May 18, 2021.
 2. That upon adoption the child be known as JDK .
 3. That SNO and NOO of Kenya National identity cards number 2267xxxx and 2204xxxx be appointed as the legal guardian of the child baby AN .
 4. That the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent birth certificate issue by the Registrar of births and deaths.
2. The application was supported by the statements of even date made by the applicant. The matter was canvassed by way of viva voce evidence on the virtual platform on the May 11, 2023.
3. The applicant is a Kenyan Citizen, residing at Katani in Machakos county and currently a human resource consultant and submits that she has the means to cater for the financial and emotional needs of the child. She has availed her bank statements as evidence of her financial standing. She has no children of her own. She has had custody of the child since December 23, 2021.



4. GNN is the guardian ad litem, having been appointed on February 16, 2023. She has prepared and submits report dated May 3, 2023 which is based on home visits and interviews she undertook. She confirms that the applicant and the child have bonded very well and that the child appears well taken care of. She therefore recommends the adoption.
5. Winfred Ikinya a representative of the Directorate of Children Services, confirms that her colleague Ezekiel Kimani prepared report dated March 20, 2023 based on home visits and interviews he conducted. The report confirms that the applicant has satisfied the requisite requirements for adoption as provided for under the *Children Act*, 2022 and recommends the adoption.
6. The court received undated report prepared by change trust. The report confirms that the child was born on May 18, 2021 to ENS at Kihara Sub County Hospital. The details of the father are not provided. Birth notification dated May 19, 2021 issued at Kihara Level 4 Hospital, Kiambaa Serial No BI AC 5xxx7 is presented before court. The said notification of birth confirms that the mother is ENS and the child is AN.
7. That soon after the birth of the child the mother opted to offer the child for adoption through the change trust society on the May 21, 2021 and the child was admitted at the New Life Home Trust on the same day.
8. After counselling, the mother signed the explanatory memorandum of biological parents on May 21, 2021, thereby relinquishing her parental rights over the child. The reason given for this decision is she had 3 other children and she was unable to fend for this baby given her meagre earnings.
9. The child was formally committed to New Life Home Trust *vide* Kiambu Children’s Court Protection and Care Case No E028 of 2021. On the 27th August the biological mother signed the legal form of social inquiry, thereby confirming that the child could be offered for adoption. This form is witness by JM of ID No 2179xxxx who identified herself as a friend to the biological mother, ENS.
10. By certificate dated December 10, 2021 serial number 00xxxx, the change trust declared the child free for adoption.
11. Both SNO and NOO confirmed that they have sworn affidavit dated 6th December giving their consent to act as legal guardian to the child. SNO is the sister to the applicant, and NOO is her brother in law. The two are married and have 2 children of their own. They understand what being a legal guardian entails and they are committed to performing this role should the need arise.
12. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the child’s adoption. Section 186 of the *Children Act*, 2022 provides;
 - (1) The court may make an adoption order on application by—
 - (a) a sole applicant; or
 - (b) two spouses jointly.
 - (2) The court shall not make an adoption order in any case unless—
 - (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.



- (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.
13. The applicant is aged 50 years having been born on April 6, 2023.
14. Article 53 of the Constitution of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:
- A child's best interests are of paramount importance in every matter concerning the child
15. This principle is restated in under section 8 of the Children Act, 2022 which provides
- Best interests of the child.
- (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;
- (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

Section 194 (1) (c) of the Children Act, 2022 also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;

In view of the foregoing the court is of the considered view that it is in the child's best interest to be adopted by the applicants. Accordingly, I allow the prayers sought in the originating summons dated December 8, 2022 and order as follows:

1. That the applicant is allowed to adopt the child; baby AN .
2. That the child be deemed to be a Kenyan citizen born on the May 18, 2021.
3. That the child be known as JDK .
4. That SNO and NOO are appointed as the legal guardian of the child baby AN now known as JDK .
5. That the Registrar be directed to enter this adoption into the Register of Adoptions and a subsequent birth certificate issue by the Registrar of births and deaths.
6. The guardian *ad litem* is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS...26th.....DAY OF ... MAY.....2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of Ms. Githogori...Advocates for the Applicant

Karani Court Assistant

