



**In re PB (Baby) (Adoption Cause E057 of 2023)
[2023] KEHC 18367 (KLR) (Family) (26 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ADOPTION CAUSE E057 OF 2023

PM NYAUNDI, J

MAY 26, 2023

IN THE MATTER OF THE CHILDREN’S ACT, 2022

**IN THE MATTER OF ADOPTION OF BABY PB IN
THE MATTER OF AN APPLICATION FOR KINSHIP**

ADOPTION

IN THE MATTER OF

AGK 1ST APPLICANT

FKC 2ND APPLICANT

JUDGMENT

1. This is a Kinship adoption as the applicants are the maternal uncle and Maternal aunt to PB, the subject minor whom they seek to adopt vide the Originating Summons dated April 4, 2023. They are therefore relatives within the extended family of the child.
2. The Applicants are husband and wife having solemnised their union on the 4th August as evidenced by marriage certificate serial No. XXX. The 1st Applicant is an [Particulars withheld] and currently living in Victoria, Australia. The 2nd Applicant is a business lady and residing at the family home in Kitengela within Kajiado County.
3. Both the Applicants testified in Court. PW2 A G K is the 1st Applicant. He has lived with the minor since she was 4 years old. She is the daughter of his sister. He has provided for all her material needs. The Adoption order will enable him provide for her benefits that accrue to his children, He has 2 other children, aged 6 and 2 years respectively. He understands the implications of an adoption order. He has the financial means to provide for the needs of the Child.



4. PW3 FKC is the wife of the 1st Applicant and therefore an Aunt to the Minor. She understands the implications of the adoption order and accepts the minor as her child. She has lived with the minor for 4 years.
5. PW1 Winfred Ikinya, Officer from the Department of Children Services. She confirms that the office prepared a report after conducting home visits. The report is dated 28th April 2023. It states that the Applicants were confirmed to suitable parents and the minor consented to the Application. The Department recommends the Adoption.
6. PW4, the minor P B, she is 16 years old. Currently in Form 2 at [particulars withheld]. She understands the effect of the Adoption order. She is happy to be adopted by the Applicants. It was her testimony that the Applicants are the only family they have known. She also filed a consent in court dated 15th January 2023 giving her consent to the Adoption.
7. PW5, PNK is the Guardian Ad Litem, she prepared a report dated 24th April 2023. She visited and interviewed the Applicants, the minor and the family of the minor. The Biological mother expressed her support for the adoption. The Guardian Ad Litem is of the opinion that the applicants will provide a safe, loving and nurturing home for the minor and therefore recommends the Adoption.
8. PW6, C K B, the proposed Legal Guardian is the elder sister to the Applicant. She is supportive of the Application. She understands the implications of being a legal guardian and accepts the role wholeheartedly.
9. PW7, N K, is the biological mother of the minor. She confirms that the Applicants are her brother and sister in law respectively. She consents to the minor being adopted as she believes that the Applicants will provide for her stability. She has one other child, the minor is the older child. She understands the consequences of the Adoption order and she willingly surrenders her parental rights to the Applicants. She signed consent to Adoption on 2nd March 2023 at KKPI Adoption Society.
10. The KKPI Adoption Society conducted an Assessment and found the Applicants to be suitable parents to adopt and declared the Child free for Adoption vide certificate serial no. xxx.
11. The Acting Chief Masige Location, Bassi Masige Location, Nyamache by letter dated January 16, 2023 confirmed that N is the mother of the Minor and the Applicant has been acting as the guardian of the child. and
12. This is a kinship adoption under section 193 of the *Children Act*, 2022 and Annex C at Page 153 of the guidelines for Alternative family care of Children in Kenya, 2014 which defines Kinship adoption as adoption of a child by a person who is a relative of the child.
13. After carefully assessing the records herein, I am satisfied that the applicants have 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.
14. The Applicants are aged 43 and 28 years respectively. In accordance with Section 186 (3) she is the maternal Uncle and Auntie of the minor. The minor was present in court and consented to the Adoption. The maternal Auntie of the minor was in court and has consented to the adoption.
15. 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

16. 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 Act 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;

17. 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 April 4, 2023 and order as follows:
- i. The Applicants A G K and F K C are allowed to adopt PB (the Child) the child to be known as P B A
- ii. The minor's date of Birth October 25, 2006
- iii. C B K is hereby appointed as legal guardian of the Child, P B A.
- iv. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children
- v. 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

Karani Court Assistant

