



REPUBLIC OF KENYA



**In re HKB (Minor) (Adoption Cause 2 of 2022)  
[2023] KEHC 20137 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20137 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE 2 OF 2022**

**G MUTAI, J**

**JUNE 30, 2023**

**IN THE MATTER OF THE CHILDREN ACT 2001**

**AND**

**IN THE MATTER OF HKB (MINOR)**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION  
OF HKB (MINOR) BY AHB AND AES (THE JOINT APPLICANTS)**

**IN THE MATTER OF**

**AHB ..... 1<sup>ST</sup> APPLICANT**

**AES ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The joint applicants herein moved this honourable court vide originating summons dated 17<sup>th</sup> September 2021 seeking for orders that:-
  - a. ENM of Post Office Box Number xxxxx – 80100 Mombasa be appointed as guardian ad litem in this case;
  - b. The Director of Children Services be ordered to conduct investigations as to the suitability of the Applicants to adopt HKB (Minor);
  - c. The Applicants be authorized to adopt HKB (Minor);
  - d. The records of the Registrar of Births and Deaths be rectified and the minor herein be issued with a birth certificate in the name of HKB (Minor);
  - e. The Registrar General be ordered to make the appropriate entries in the Adopted Children Register in respect of HKB (Minor).



2. The application is supported by the averments in the statement in support thereof sworn on August 24, 2021 in Essex, England before an English Notary Public. The applicants are adult Kenyan and Nigerian citizen aged 32 and 46 respectively as at the time when the application was made. The joint applicants got married in Mombasa on the 31<sup>st</sup> day of January 2014. They have one child together, AAS born in the United Kingdom on 10<sup>th</sup> July 2017. The applicants are Christians, as is the proposed adoptive child. The 1<sup>st</sup> Applicant is the aunt of the child. The child's mother, FHB, who was the sister of the 1<sup>st</sup> Applicant, is deceased. She died after being burned by an electric fire caused by a faulty wiring of the house she and the 1<sup>st</sup> Applicant were staying in. The whereabouts of the child's father is unknown. FHB died on 14<sup>th</sup> April 2012. The 1<sup>st</sup> Applicant, then resident and working in Kenya, took care of the child until he was 4 years old when she left Kenya to work in the United Kingdom. The child was left in the hands of his grandmother, HHB. The latter filed for guardianship and was granted the orders by the Tononoka Children Court. Unfortunately, the maternal grandmother is old and sickly. The applicants therefore propose to adopt the child so that he can have a home. Both Applicants are social workers.
3. The child was born on 17<sup>th</sup> October 2010 at Family Care Hospital Nairobi. At the time the application was made he was in Grade 5 at the [Particulars withheld] School Mombasa. The child presently lives with the grandmother in Mombasa. The 1<sup>st</sup> Applicant treats her as if he were her own child.
4. The Applicants would like to adopt the child. The child was interviewed and assessed and was declared free for adoption by the Change Trust Adoption Society. The case committee of Change Trust Adoption Society at its sitting on 6<sup>th</sup> August 2021 declared the child free for adoption and a Certificate S/No.00418 was issued.
5. ENM appointed as the guardian ad litem on 24<sup>th</sup> November 2021. The Directorate of Children Services and the guardian ad litem were directed to file their respective social inquiry reports within 30 days.
6. The County Children Coordinator Mombasa County filed social inquiry report dated 16<sup>th</sup> January 2023 recommending the adoption. Equally the guardian ad litem filed her report on 29<sup>th</sup> March, 2022 recommending the adoption.
7. During the hearing the applicants urged the court to allow the application to enable them adopt the baby and stated that they understood the consequences of adoption and that it is permanent.
8. I have considered the application herein, materials in support and evidence by various witnesses and the issues that emerge for determination are; whether the baby is available for adoption, whether the applicant is fit to adopt the baby and most importantly whether the adoption is in the best of the child.
9. I have set out above the circumstances under which the 1<sup>st</sup> Applicant took care of her nephew. I will not rehash the same here. As the mother of the child is deceased, and with the whereabouts of the father being unknown I dispense with the requirement for consent.
10. On the child's nationality, it is clear the baby was born in Nairobi Kenya to FHB, a Kenyan citizen. Article 14(1) of *the Constitution* of Kenya, 2010 provides that "a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen". Therefore, the subject child can only be presumed to be a Kenyan citizen by birth.
11. The child is above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to section 156 of The *Children's Act*. Further section 157 does recognize any



child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. I have no doubt the child is fit for adoption.

12. Concerning the applicants suitability to adopt, the 1<sup>st</sup> Applicant is a Kenyan citizen thus qualifying this to be termed as local adoption. Both applicants are not less than 25 years nor more than 65 years of age and are thus not disqualified by the *Children Act*, 2022. Both applicants are financially secure and have no criminal records. They both have fully bonded with the child.

*In re JNA* [2018] eKLR L.A.Achode, J stated that:-

“I have perused the entire record and find that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought.”

It’s my view that the Applicants have met the necessary requirements to adopt the child.

13. On the question of whether the adoption is in the best interests of the child, guidance can be drawn from article 53(2) of *The Constitution* and section 8 of The Children’s Act which underscores the best interests of a child principal as the primary consideration before making any decision concerning a baby.

Am also guided by the decision of Nyakundi, J in the case of *In re B (Baby)* [2018] eKLR where he stated that:-

“The purpose of Kenya’s Constitution and Children’s Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in every adoption cause provision is of the best interest of that very child...

It is that family unit that *the constitution* contemplates under Article 45 which also has to take responsibilities in fulfilling the obligations enjoined in Article 53 of the same constitution.”

14. The mother of the child is deceased. The whereabouts of his father is not known. He is like any other child in need of parental care and guidance. He needs basic necessities like food, shelter, education and clothing. He has fully integrated with the applicants. He loves them and they love him. It is obviously in the best interests of the child that this adoption application be allowed.

15. Accordingly, the application is allowed with orders that: -

- a. The consent of the biological parent is hereby dispensed with as she is deceased;
- b. AH and AES are hereby authorized to adopt HKB (Minor);
- c. KHB and HHB are hereby appointed the Legal Guardians of HKB (Minor) in the event the Applicant is deceased or otherwise becomes unavailable before the said child turns 18 years old;
- d. The Registrar General is directed to enter the Adoption Order made herein in the Adopted Children’s Register;
- e. The guardian ad litem is discharged.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 30<sup>TH</sup> DAY OF JUNE 2023 VIA MICROSOFT TEAMS**

**GREGORY MUTAI**



## **JUDGE**

### **In the presence of:-**

No appearance for the Applicant;

Mr. Arthur – Court Assistant.

