



REPUBLIC OF KENYA



**In re OA (Child) (Adoption Cause E50 of 2023)
[2023] KEHC 21381 (KLR) (Family) (9 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21381 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E50 OF 2023
MA ODERO, J
AUGUST 9, 2023
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY OA (THE CHILD)**

IN THE MATTER OF

MWC APPLICANT

JUDGMENT

1. Before this court is Originating Summons dated March 29, 2023 by which the Applicants MWC seeks the following orders: -
 1. That the Applicant be authorized to adopt Baby OA and that the Registrar General be directed to enter this adoption into the register of Adoptions.
 2. That JNC and SMM be appointed as the Legal Guardian of the minor who shall be presumed to have been born in Kenya.
2. The application was supported by the statement of even date sworn by the Applicants. The matter was canvassed by way of *viva voce* evidence on the virtual platform.
3. The Applicant wishes to adopt the Subject Child in order to expand her family. The Applicant confirmed that she understands the legal implications of an adoption order, and undertakes to accord to the Subject Child all rights due to a biological child including the right to inherit.



Analysis and Determination

4. I have carefully considered this application for adoption, the evidence adduced in support thereof as well as the various reports in court. The prerequisites which must be met before an adoption order can be made are set out in Section 184 (1) (a) and (b) of the [Children's Act 2022](#) as follows: -
 - "(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 was born on September 4, 2020. A copy of the Birth certificate serial Number xxxx is annexed to the summons. She is therefore now aged two (2) years old and is above the six (6) weeks age limit provided for in the law.
7. Change Trust Adoption Society which is a registered adoption agency have annexed to their report a copy of their Certificate Serial Number xxxx dated November 11, 2022 declaring the child Free for Adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
8. The duty of the court is to analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as evidenced by the annexed copy of her National Identity Card.
9. The Applicant is not married. She has no biological children of her own. She now wishes to adopt a child in order to expand her family and to provide a needy child with a home.
10. The Applicant is in gainful employment. She works as a House help currently employed by one TN. She has annexed a copy of her Bank Statement. I am satisfied that the Applicant is financially stable and has the capacity to provide for the needs of the child.
11. The Applicant was examined by a doctor and was found to be Physically and mentally fit. She has annexed a copy of Clearance Certificate issued to her by the Directorate of Criminal Investigations.
12. The Applicant has appointed her sister and the husband as legal guardians for the child. The proposed legal guardians JNC and SMM have signed a consent dated March 29, 2023 indicating their willingness to be appointed as legal guardians for the child. All in all, I am satisfied that the Applicants is are suitable adoptive parents.
13. The Subject Child was born in Ruiru to one TWN. The child's Father is unknown. The mother offered up the child for adoption to KKPI Adoption Society and signed by the initial consent in form of certificate of acknowledgement for parents giving children for adoption.
15. The child's biological mother then went underground and could no longer be traced to conclude the adoption process. The Director of Childrens Services office also reached out to the biological mother on July 10, 2023 through the contacts given. The person who picked the call denied being the mother of the subject child. The biological mother therefore effectively abandoned the child in the hands of the Adoption Agency.
16. On November 2, 2022 the Nairobi Children's Court committed the child to Olive Angel Centre for Abandoned children. On December 9, 2022 the child was placed into the custody of the Applicant under a Foster Care Agreement.



17. This is a case where the biological mother voluntarily gave up her child for adoption however, the mother was not traced to give her final consent. In the circumstances, I waive the requirement for consent of in line with section 187(1) *Children Act 2022*.
18. 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)
19. This is a child who had been given up for adoption at birth. She faced an uncertain future living in various Childrens Homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.
20. The Child has lived with the Applicant in their home since December 2022. She has undoubtedly bonded with the Applicant and her Foster family. I was able to see the child online. She was a healthy toddler who was comfortable sitting on the lap of the Applicant.
21. A Home visit was conducted by the Childrens Officer. The Applicant reside in a three bedroomed house in [Particulars Withheld] area of Murang’a county. The home has adequate space and facilities for the child.
22. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Children Services. All three reports were positive and recommend the adoption.
23. Finally, I am satisfied that this adoption serves the best interests of the child. Accordingly, I allow this application and make the following orders: -
- 1) The Applicant MWC is authorized to adopt the child known as Baby OA.
 - 2) Upon adoption the child will be known as TNM.
 - 3) The Registrar General is directed to make relevant entry in the Adopted Children's Register.
 - 4) JNC and SMM are appointed as legal guardians for the child.

DATED IN NAIROBI THIS 9TH DAY OF AUGUST, 2023.

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MAUREEN A. ODERO

JUDGE

