



**In re Baby A alias AB (A Child) (Adoption Cause E014 of 2023)
[2023] KEHC 27257 (KLR) (19 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27257 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E014 OF 2023
G MUTAI, J
DECEMBER 19, 2023
IN THE MATTER OF THE CHILDREN ACT, ACT NO 29 OF 2022
AND
IN THE MATTER OF BABY A ALIAS AB (A CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF
BABY A ALIAS AB (A CHILD) BY LOS AND CAO
(THE JOINT APPLICANTS)**

BETWEEN

**LOS 1ST APPLICANT
CAO 2ND APPLICANT**

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The joint applicants seek to adopt Baby A alias AB (A child). *vide* an Originating Summons dated August 21, 2023, they sought the following orders:-
 1. Pursuant to article 14(4) of the Constitution of Kenya, 2010 and section 7 of the Children Act, 2022, this honourable court be pleased to declare the child Baby A alias AB a Kenya citizen by birth;



2. Pursuant to the provisions of section 187 of the *Children Act, 2022*, this honourable court be pleased to dispense with the requirement of consent to the adoption as required by the provisions of section 186 of the *Children Act, 2022*;
 3. The applicants LOS and CAO be authorised to adopt Baby A alias AB (a child);
 4. Upon the making of the adoption order, the child be known as AP;
 5. Upon the making of the adoption order DO be appointed a Guardian of the child as provided for by the provisions of section 195 of the *Children Act, 2022*;
 6. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of birth of the child as being August 22, 2016 in the Adopted Children Register as provided for by section 201 of the *Children Act, 2022*; and
 7. The costs of the application be costs in the cause.
2. The Joint applications also filed a chamber summons application dated August 21, 2023 *vide* which they sought orders that:-
1. This honourable Court be pleased to appoint ROO of Mombasa to act as the guardian ad litem in respect of this adoption cause;
 2. The honourable Court be pleased to order that the guardian ad litem prepare a statutory report in terms of section 188(2) of the *Children Act, 2022* and submit the same to the Deputy Registrar within 14 days;
 3. The Director of Children Services through the Children Department Mombasa County, prepare the relevant report in respect of this adoption and submit the same to the Deputy Registrar within 14 days; and
 4. The costs of this application be costs in the cause.
3. In the statement in support of the application, the joint applicants averred that they were born on January 1, 1972 and January 1, 1975, respectively. They are Kenyan adults of sound mind of African race professing Christian religion residing in the Magongo area of Mombasa County. They got married in 1997 and have no criminal record, are in possession of certificates of good conduct, and are not homosexuals.
 4. The joint applicants received the child in respect of whom these proceedings relate on May 11, 2017. The child has continuously been in their care and possession since the said date. The child is apparently of Kenyan nationality and is of the African race.
 5. Regarding the child, she is estimated to have been born on August 22, 2016. She was found abandoned immediately after birth in a bush in Sofia Area, Voi, Taita Taveta County. A member of the public rescued the child. The incident was reported at Voi Police Station, where it was recorded as entry number OB xx/22/08/2016. The child was admitted at St. Joseph's Children Home, Bura, for care and protection on 1st September 2016 pursuant to the orders issued by the Principal Magistrate in Voi PMCC Protection and Care Cause No. 29 of 2016. Since then no one has come forward to claim her.
 6. Given the circumstances of the matter, the Adoption Society concluded that the baby is an abandoned child in need of alternative family care and that she stands to benefit from family love, care and provision as opposed to being in institutional care. For that reason, they stated that adoption would be



in the child's best interest. Consequently, they issued a certificate to declare the child free for adoption. The serial number of the said certificate is No. 00XX63.

7. The matter first came before me on October 11, 2023, when the Chamber Summons applications for appointment of a guardian ad litem was heard. After hearing the oral testimony of ROO and being satisfied that he met the legal requirements I appointed him as the guardian ad litem in respect of these proceedings. I ordered him to prepare and file the necessary statutory report within 30 days. I also ordered the Director of Children Services, through the Children Department Mombasa, "to prepare and file the relevant statutory report within 30 days of October 11, 2023," and slated the Originating Summons for hearing on November 15, 2023.
8. The Originating Summons was heard on 15th November and 4th and December 14, 2023. A total of 7 witnesses testified. I will set out their evidence in brief below.
9. The first witness was the 1st applicant, LOS. He testified that he is married to the 2nd applicant. The proposed adoptive child had been under their care for five years and six months and had bonded well with them. Mr. S testified that he was aware of the effect of adoption and was ready to proceed with it. His wife, CAO, was the second witness. Caroline testified that they received the child in 2017. The child goes to school. She expressed her readiness to guide the child through her formative life and beyond. If the adoption application is allowed, she testified, they would call the child AB.
10. The biological child of the applicants, NOO, was the 3rd witness. He supported the proposed adoption by his parents. He testified that he loves the child, the subject of the proceedings and that they respect each other. The 4th witness was DO. Mr. O is a clearing and forwarding agent residing in Bamburi. He is married with three children. The said witness is the proposed legal guardian. He testified that he is prepared to be the legal guardian of the child in the event that the applicants die or are unable to take care of her. He further testified that his wife supported his appointment. The guardian ad litem, ROO, was the 5th witness. He produced his report. In his report, he recommended that the adoption application be allowed as the applicants met all the statutory requirements.
11. The 6th witness was Joshua Mwalimu Wambua. He is a social worker with the Little Angels Network. He testified that his employer declared the child free for adoption and vetted and approved the applicant. In his view, the child had bonded well with the applicants. Consequently, he also recommended the adoption. Ms Njeri Mwangi was the 7th and last witness. She is a Children's Officer working with the Directorate of Children Services. She prepared a report dated December 4, 2023 after conducting a home visit. In her report, she stated that the applicants' home environment was good for the child. The witness recommended adoption.
12. I have considered the application herein, the documents in support thereof and evidence of the various witnesses. The issues that emerge for determination are whether the baby is available for adoption, if the applicants are fit to adopt the baby, and, most importantly, whether the adoption is in the best of the child.
13. I have already set out the circumstances under which the child was found. The child was abandoned by the mother immediately after birth. Nobody has come forward to claim her. Given the period that has elapsed since the said occurrence, it is most unlikely that the biological parents will ever turn up. The



need for consent pursuant to sections 186(8) and 187 of the *Children Act* 2022 is therefore dispensed with. I am guided by the case of *In re HN (Baby)* [2020] eKLR, where the court stated:-

“As there is nobody laying claim over the baby, the requirement for consent is hereby dispensed with pursuant to Section 159(1) of the *Children’s Act*. In view of the above consideration, it is my finding that the child is available and suitable for adoption.”

14. Regarding the baby’s nationality, it is clear from the evidence adduced that she was found abandoned immediately after her birth. Article 14(4) of the *Constitution* of Kenya, 2010 states that a child who is less than eight years of age and whose nationality and parents are not known is presumed to be a Kenyan citizen by birth. In view of this provision, the child herein is presumed to be a Kenyan citizen by birth.
15. In terms of age, the child is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive baby pursuant to Section 184 (b) of the *Children Act*, 2022. Further, Section 185(1) states that any child who is a resident of Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt the child is fit for adoption.
16. Concerning the Joint Applicants’ suitability, they are Kenyan citizens aged 51 and 48 years, respectively, which places them under the age bracket of not less than 25 years nor more than 65 years for an adoptive parent in compliance with Section 186(2) of the *Children Act*, 2022. The applicants have been described as financially stable. They have no criminal record. Since the placement of the minor into their custody, the child has fully bonded with them. They also understand the consequences of adoption and know that once an adoption order is made, it is permanent.
17. Consequently, I have no doubt that they have met the necessary requirements to adopt the baby. I am guided by the case of *In re B (Baby)* [2018] eKLR, where the court stated:-

“I am of the considered view that weighing all factors and the evidence placed before me, the applicants are of sufficient ability to bringing up the child and to furnish her with appropriate support and maintenance within their resource base available to them.”

18. On the question of whether the adoption is in the best interests of the baby, I am guided by Article 53(2) of the *Constitution* of Kenya, 2010 and Section 8(1) and (2) of the *Children Act* 2022 which underscores the best interests of a child as the primary consideration before making any decision concerning a baby.
19. Further, the court in the case of *In re MA (Baby)* [2021] eKLR stated:-

“This court, in the case of *In re B (Baby)* [2018] eKLR, held 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 is the best interest of that very child.”

20. The child herein was found abandoned. He, therefore, needs basic necessities like food, shelter, education and clothing. He has fully integrated with the applicants. It is obviously in the child’s best interests that this adoption application is allowed. I am guided by the case of *In re IK (Child)* [2020] eKLR, where the court stated:-

“She needs parental care to grow up as a normal child with emotional and physical protection, which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and



well-being of the child. As the Constitution and the law state, in all matters concerning a child, the child's best interests are paramount.”

21. Based on the foregoing, I find and hold that the adoption application has merits. Consequently, I issue the following orders:-

1. The child Baby A alias AB is hereby declared a Kenyan citizen by birth pursuant to Article 14(4) of the Constitution of Kenya, 2010 and Section 7(1) of the Children Act, 2022;
2. The requirement of consent of the biological parents of the child to the adoption under section 186 of the Children Act, 2022 is hereby dispensed with;
3. The joint applicants LOS and CAO are hereby authorised to adopt Baby A alias AB who shall hence be called AP;
4. DO is hereby appointed as the legal guardian of Baby A alias AB, now known as AB, in the event the joint applicants LOS and CAO become deceased or are otherwise permanently unable to take care of Baby A alias AB, now known as AP before she attains the age of majority;
5. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the estimated date of birth of the child as being 22nd August 2016 in the Adopted Children's Register; and
6. The guardian-ad-litem, ROO, is hereby discharged.

Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 19TH DAY OF DECEMBER 2023 AT MOMBASA VIA MICROSOFT TEAMS.

.....

GREGORY MUTAI

JUDGE

In the presence of: -

Ms. Katisya for the Joint Applicants

Arthur – Court Assistant

