



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Baby PBS aka AKA (Minor) (Adoption Cause E06 of 2021)  
[2022] KEHC 261 (KLR) (31 March 2022) (Judgment)**

Neutral citation: [2022] KEHC 261 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ADOPTION CAUSE E06 OF 2021**

**MW MUIGAI, J**

**MARCH 31, 2022**

**IN THE MATTER OF**

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

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

**JUDGMENT**

**BACKGROUND**

1. Through an Application by Exparte Chamber Summons dated 15<sup>th</sup> April, 2021 and filed in Court on the 29<sup>th</sup> April 2021 the Applicants ABK (“the 1<sup>st</sup> Applicant”) and DMT (“the 2<sup>nd</sup> Applicant”), sought to be allowed by this Court to adopt baby PBS (hereafter “the child”). GWN be appointed to act as a Guardian Ad Litem for the child pending the hearing and determination of the application. The Guardian Adlitem GWN was appointed as such for purposes of these proceedings on 27/07/2021.
2. The child who is the subject of these adoption proceedings Baby PBS was born to MM on 22<sup>nd</sup> February, 2017 at St. Elizabeth Hospital Mukumu vide birth certificate entry No. xxxx. MM and her mother S visited Kakamega KCH to explore the option of offering the child out for adoption due to the fact that it was an unplanned pregnancy and MM was a student. The birth mother was taken through the parent offering child for adoption process and she affirmed that it was in the child’s best interest to offer her child for adoption by signing the Certificate of Acknowledgement. The child was then handed over to the custody of Divine Providence Children Home as a child in need of Care and Protection on 28<sup>th</sup> February, 2017 after the consent document by the birth mother was signed. After six weeks MM (the birth mother) and her mother S swore and signed the final Consent for parent offering a child for adoption and it was duly commissioned. Baby PBS was committed to Divine Providence Children Home at the Kakamega Children’s Court on 28<sup>th</sup> February, 2018 vide Protection and Care Case Number xxxx. The child was freed by the Kenya Children’s Home Adoption society Case committee on its sitting of 20<sup>th</sup> of June, 2018 and a freeing Certificate Serial No. xxxx issued



pursuant to Section 156 (1) of the *Children's Act 2001*. The relevant documents in support were annexed;-

1. Birth certificate entry number xxxx
  2. Application letter by MM and S
  3. Birth certificate of MM entry number xxxx
  4. Identification card number of MM and S
  5. Initial consent
  6. Committal order dated 18<sup>th</sup> April, 2017
  7. Certificate of acknowledgement dated 28<sup>th</sup> February, 2017
  8. Final consent by S
  9. Chiefs letter
  10. Medical report
  11. HIV result
  12. Admission form
  13. Offering form
3. The Applicants ABK and DMT approached the Kenya Children's Home Adoption Society on 10<sup>th</sup> January, 2017 with an intention of being ratified for placement with two children a male and female with a view of eventually adopting. They were placed with the first child J aka BAK from Thomas Barnardo House on 30<sup>th</sup> March, 2017. A follow up visit was later conducted on 11<sup>th</sup> December 2017 and a review done for consideration of second placement by the Society case committee sitting on 17<sup>th</sup> January, 2018. The applicants were thus placed with the minor herein PBS from Divine Providence Children Home on 28<sup>th</sup> June, 2018 after successful bonding at the said home. A background information of the prospective adoptive parents was undertaken and revealed the following; that the Applicants got married in the year 1995 after being separated from their first spouses where DMT was previously married to one M and ABK was married to one R respectively. They formalized their marriage on 25<sup>th</sup> February, 2017. They had already adopted a son by the name BAK and the desired to parent another child through adoption since they could not parent naturally due to DMT reproductive issues. Mr. ABK is an entrepreneur who operates a hotel, hardware and a butchery as well as practice farming while DMT is a business lady. By the time the couple approached the Child Welfare Society of Kenya they had already adopted their first child by the name BAK whose date of birth is 10<sup>th</sup> May, 2015. The said child was placed under their care from Thomas Barnardo House and the application for the same done at the High Court at Machakos vide Adoption Cause No. 16 of 2017. The Applicants states that they have the requisite experience in raising and nurturing children as they have taken care of their nephews and nieces as well as their first adopted son. The applicants reside in their own permanent 3 bedroomed house at [Particulars Withheld] in Taveta sub – county. Both the applicants are business people with a net income of kshs. 82,300/-. The couple have no major health concerns and they enjoy a medical cover through NHIF. They are Christians and attends [Particulars Withheld] church where DMT is a choir member while ABK is a church elder. They do not have a criminal record.
4. Kenya Children's Homes filed their report dated 31<sup>st</sup> December, 2020. Follow up visit was conducted on 11<sup>th</sup> December 2017 and a review done for consideration of second placement by the Society Case



Committee sitting on 17<sup>th</sup> January, 2018. The Applicants were thus placed with the minor herein PBS from Divine Providence Children Home on 28<sup>th</sup> June, 2018 after successful bonding at the said home. The Adoption Society recommends that the minor in this case be adopted by the Applicants herein and the child acquires the names AKA.

5. The Director of Children Services through a Report dated 8<sup>th</sup> December, 2021 in respect of the proposed adoption of the child by the Applicants was prepared by Mwasiwa Juma Boga the County Coordinator Children's Services Taita Taveta. The report contains family and professional background information of the Child's Adoptive Parent. The Applicants are economically stable. Mr. ABK and DMT are in business industry as well as farming. The Applicants have established their residential home in Taita Taveta County where they have a permanent three bed roomed house with piped water and electricity at [Particulars Withheld]. The applicants reported that the extended family has embraced the child and accorded her an identity.
6. The Guardian ad Litem GWN told the Court that the applicants are her friends for almost 20 years. The child has bonded well with the brother BAK. The applicants have bonded well with the child. They have enrolled the child in school where she is in PP2 at [Particulars Withheld] in Taita Taveta County. She further stated that she visits them regularly. She recommends the adoption.
7. This Court finds that the adoption in question is in the best interest of the child as she will grow up within a family of her own instead of an institution. The Reports by the Director of Children's Services, Guardian Adlitem and the Adoption Agency are in favour of the adoption after due diligence process. The Applicant have fulfilled all the legal requirements necessary for a local adoption and have been proven to be suitable potential adoptive parent.
8. The Applicants herein ABK and DMT were assessed and found to be financially stable from their incomes form business and in farming hence well capable of raising the child. The Applicants are well aware that an order of adoption grants the child inheritance rights to his property and they have no objection to it.

## **DISPOSITION**

- (a) The Applicants, ABK and DMT are hereby authorized to adopt the child Baby PBS and the child shall therefore be known as AKA Date of Birth shall be 22/02/2017. The place of birth shall be St. Elizabeth Hospital Mukumu. She is therefore presumed to be a Kenyan citizen by birth.
- (b) The Legal Guardians are JM and his wife JNN
- (c) The Registrar General is hereby directed to enter this order in the Adoption Register.
- (d) The Guardian ad litem is hereby discharged.

**READ AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 31<sup>ST</sup> DAY OF MARCH, 2022. (VIRTUAL CONFERENCE)**

**MARGARET W. MUIGAI**

**JUDGE**

