



**In re Adoption of NC (Child) (Adoption Cause E005 of 2021)
[2022] KEHC 12210 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 12210 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E005 OF 2021**

JO NYARANGI, J

APRIL 28, 2022

NC.....THE CHILD

AND

DFN DE MW

SSP.....APPLICANTS

JUDGMENT

1. By Originating Summons dated August 10, 2021 filed on August 11, 2021 and later amended on February 9, 2022, DFN De W(hereafter the 1st applicant) and SSP (hereafter the 2nd applicant), moved this court pursuant to section 154,156(1), 157 (1), 158(1), 4 (a), 160 (1), 162, 163, 164 and 170 of the *children Act* seeking orders that;
 - a. They be authorized to adopt baby NC
 - b. The child to retain her name as NCW
 - c. Sheila LST be appointed as the child's legal guardian
 - d. The Registrar General do enter the adoption order in the adopted children's register
2. The application is based on averments contained in the statement in support jointly sworn on 10th August, 2021.
3. The 1st applicant born in 1969 is a Kenyan citizen as well as a British national. He is married to the second applicant a Kenyan national born on October 19, 1977. The applicants both of whom are divorcees from their previous marriages have been living together since 2010 as husband and wife, and thereafter solemnized their marriage on December 15, 2017 before the registrar of marriages office in Malindi.
4. Professionally, the 1st applicant is a consultant trainer in; wildlife matters, pilots, wildlife conservation, safety and project management. The 2nd applicant is an internet supplier. The motive for this adoption



- is to accord an opportunity to the child who is in need of special medication to access the same and also to be stable in the 1st applicant's hands considering that the biological father is incapable of providing
5. Regarding the baby born on August 28, 2006, she is a biological child to the second applicant and one MAC with whom she has since divorced paving way for the second applicant getting married to the 1st applicant.
 6. Subsequently, MAC signed a consent dated May 13, 2021 voluntarily giving up the subject herein to be adopted by the step father (1st applicant) jointly with the biological mother. According to the said consent, his action is intended to facilitate the child acquire British citizenship so as to access various opportunities and be able to access proper medical care as she (minor) is suffering from downs syndrome and consistent heart disease.
 7. This being a kinship adoption, the child was declared free for adoption vide Little Angles Network Services meeting held on June 3, 2021.
 8. Upon instituting this suit, the applicants filed a Chamber Summons dated 10th August 2021 seeking the appointment of Vanessa Paul as the guardian ad litem. On 10th November 2021, the court appointed the said V as guardian ad litem and further directed the Director Children Services and the guardian ad litem to file their respective social inquiry reports within 30 days.
 9. Subsequently, the Director Children Services filed his report dated January 25, 2022 recommending the adoption. The guardian ad litem filed hers on December 15, 2021 also recommending the adoption. Little Angles followed suit and filed theirs on February 28, 2022 thus approving the adoption.
 10. I have considered the adoption herein. The issues for determination are;
 - a. Whether the child is available for adoption.
 - b. Whether the applicants are suitable for adoption.
 - c. Whether the adoption is in the best interests of the child.
 11. The child herein is a biological baby to the second applicant. Both applicants are Kenyan nationals with the 1st applicant holding a UK citizenship as well. The child herein is suffering from a special medical condition which has contributed to the biological father relinquishing parental responsibility by signing a consent to allow the 1st applicant adopt the baby to enable her get full support by receiving specialized medical attention in UK courtesy of the 1st applicant's citizenship. In the circumstances, consent has been obtained pursuant to sections 158 and 159 of the *Children Act*. As regards the age of the applicants, they are above 25 years and below 65 years old which is the age requirement for any prospective adoptive parents in compliance with section 158 of the *Children Act*.
 12. Besides, the adoptive child although a special case she was able to identify the applicants as her parents thus signifying her position that she has no objection to her being adopted by the 1st applicant. Under section 157, any child who is resident within Kenya whether born in Kenya or outside Kenya is eligible for adoption. This being a local and kinship adoption, the child is suitable for adoption.
 13. Regarding the suitability of the parents, the 2nd applicant is the biological mother while the 1st applicant has expressed his desire to undertake full parental responsibly of the baby like a biological father. The child has fully bonded with the 1st applicant whom both stake holders described as caring, loving and a Christian with no criminal record. Both parents appreciate the consequences of these adoption proceedings. Again this being a local adoption, I am satisfied that the applicants have the requisite conditions to adopt the baby.



14. Concerning the best interests of the baby, article 53 (2) of *the Constitution* and section 4 (2) and (3) of the *children Act* are clear on the best interests of a child principle. The applicants as well as the stake holders have underscored the best interests of the child as the key consideration taking into account the special medical condition of the baby who needs better medical attention outside Kenya.
15. It is apparent from the pleadings and stake holders' reports that the child is need of medical support to make her life meaningful. Since she has fully bonded with the 1st applicant she will enjoy both fatherly and motherly love, parental care and guidance plus close psychological and emotional support given her medical condition.
16. In a nutshell, it is my conviction that the application herein is in the best interests of the child and therefore do allow the same with orders a follows;
 - a. The applicants are hereby authorized to adopt baby NC who henceforth shall be known as NCW.
 - b. That the guardian ad litem is discharged.
 - c. That SLS be and is hereby appointed as legal guardian to the baby in case of any eventuality befalling the applicants.
 - d. That the child's date of birth shall be September 29, 2006
 - e. That Registrar General is directed to enter the adoption order herein in the adopted children's register

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 28TH DAY OF APRIL, 2022

J .N . ONYIEGO

JUDGE

