



**In re Baby BM (Minor) (Adoption Cause E146 of 2021)
[2022] KEHC 10638 (KLR) (Family) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 10638 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E146 OF 2021
LA ACHODE, J
APRIL 28, 2022
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY BM (MINOR)
BY
CA (APPLICANT)
IN THE MATTER OF
CAROLINE AWOUR APPLICANT**

JUDGMENT

1. The Applicant moved this court vide the Originating Summons dated 30th August, 2021 seeking to be allowed to adopt Baby BM, a female minor, as a sole female Applicant. The record before court indicates that the Applicant, CA, is a Kenyan, working as a tours and travel transport provider. She professes the Christian faith.
2. The minor was found abandoned within Kayole Area, Nairobi County on 10th June, 2018 and was rescued by Ms. AA who reported the matter to Kayole Police Station. The case was booked under OB No. xxxx. The minor was committed to Imani Children's Home vide a court order dated 5th April, 2019 by Nairobi Children's Courts in Protection and Care Case No. xxxx.
3. The child was declared free for adoption by the KKPI – adoption Society and Certificate of Serial No. xxxx issued on the 7th August, 2019. The Applicant entered into a Foster Care Agreement with Imani Children's Home on the 25th July 2019 and the child was subsequently placed with the Applicant on the same date.
4. An officer from the Directorate of Children's Services conducted home visits and prepared and filed a report on 18th January, 2019. The officer noted that the Applicant lives with the child, in a four-



bedroom house in Kiambu County. The report indicates that the environment is conducive for the minor's development.

5. The officer noted that the Applicant has built a strong bond with the child, and they relate well as mother and daughter. The child was healthy, happy, and well-groomed. The Officer recommended the adoption stating that it would be in the minor's best interest to be adopted by the Applicant.
6. Section 158 (1) of the *Children's Act No. 8 of 2001* provides that an application for adoption by a sole Applicant shall be lawful where the applicant:
 - a. Has attained the age of 25 years and is at least 21 years older than the child but has not attained the age of 65 years old; or
7. The Applicant in the instant case is above the age of 21 years, but below 65 years of age. The requirement set out under section 158(1) of the Children's Act is disjunctive hence the Applicant is within the age bracket stipulated by the law for the adoption to be allowed.
8. The court appointed GWK to act as the Guardian ad litem for the minor vide the order dated 4th January, 2022. She filed a report dated 24th January, 2022 in which report she noted that the child had adapted well to her home. She had her own room and had a well-rounded routine between her school schedule and home schedule.
9. Ms. PAO, the sister to the Applicant, consented vide her Affidavit dated 30th August, 2021 to be appointed the legal guardian for the minor in the event of incapacitation or death of the Applicant.
10. The court observes that the Applicant has no criminal record as evinced by the Police Clearance Certificate No. xxx issued by the Directorate of Criminal Investigation (DCI) on 5th September, 2018. The Medical Report dated 5th September, 2018 indicates that the Applicant is of sound mind and good health as required in Section 158(3) of the Children's Act.
11. Article 53 of *Constitution* of Kenya 2010, provides the overarching principles which must apply whenever any decision concerning a child is to be considered. The said Article provides that:

“A child's best interests are of paramount importance in every matter concerning the child.”

This principle finds a firm place in the law in section 4(2) and 4(3) of the Children's Act No. 8 of 2001 and is echoed by Article 4 of the African Charter on the Rights and Welfare of the Child which provides that:

“In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration.”

12. From the foregoing, the court is of the considered view that it is in the child's best interest to be adopted by the Applicant. Accordingly, I allow the prayers sought in the Originating Summons dated 30th August, 2021 and order as follows:
 - i. The Applicant, CA, be and is hereby authorized to adopt BM (the minor), who shall henceforth be known as ETH after the adoption.
 - ii. The child's date of birth is hereby presumed to be 15th April, 2018.
 - iii. The child is presumed to have been born in Kenya in accordance with Article 14(4) of the Constitution of Kenya 2010 and her place of birth shall be Nairobi.



- iv. The Registrar General be and is hereby ordered to enter her name in the Adopted Children's Register.
- v. The Director of Immigration be and is hereby authorized to issue the child with a Kenyan Passport.
- vi. PAO be and is hereby appointed as the legal guardian of the child, in the event of incapacitation or death of the Applicant.
- vii. The Guardian *ad litem* is hereby discharged.

SIGNED, DATED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF APRIL, 2022

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L.A ACHODE

HIGH COURT JUDGE

In the presence of.....Advocate for the Applicant

