



REPUBLIC OF KENYA



**In re JB alias NGO (Minor) (Adoption Cause E152 of 2021)
[2022] KEHC 558 (KLR) (Family) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E152 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 JB ALIAS NGO (MINOR) BY CO AND CCA (APPLICANTS)**

JUDGMENT

1. The Applicants CO and CC are in a monogamous marriage which was solemnized at the [Particulars Withheld] Church in Nairobi on the 25th of August 2001 as evinced in the Certificate of Marriage Serial No. xxxx. They have one biological daughter aged 11 years. They wish to adopt a male child known as Baby JB through the Originating Summons dated 26th October, 2021.
2. From the pleadings, the 1st Applicant CO is an Advocate of the High Court of Kenya and the 2nd Applicant CC is an Administrator and Human Resource Officer at [Particulars Withheld] & Company advocates. They reside in [Particulars Withheld], Nairobi County and both profess the Christian faith.
3. The subject minor was born on the 3rd march, 2020 to QAA as indicated in the birth notification serial No. xxxx. The biological mother reported to the Little Angels Network through New Life Home Trust – Kisumu, seeking help to give up Baby JB for adoption. Her intention was to enable him to get better care, love and protection compared to the care she could offer him.
4. The biological mother reported that she did not have the financial capability to take care of the minor as she has another child who is physically challenged aged two years. She signed the initial consent for adoption of the minor on the 3rd March, 2020 surrendering the child willingly for placement in the children's home for adoption. The child was placed at New Life Home Trust – Kisumu on 3rd march 2020 pending a committal order.



5. On 16th October, 2020 the biological mother QAA signed the legal consent which was attested by Advocate Peter Daniel Onyango. The Advocate did guide and advise her through the Explanatory Memorandum for Biological Parents/Guardian, before she signed the consent.
6. On 4th November, 2020 the Senior Resident Magistrates Court Siting at Winam committed the child vide Protection and Care case number 124/2020. On 24th May, 2021 the Applicants took the child into foster care with a view of adopting, upon signing a Foster Care Agreement.
7. Prior to the placement the child was declared free for adoption by Little Angels Networks and a Certificate of Serial No. xxxx dated 8th April, 2021 issued. The guardian ad litem Ms. Pamela Shiyoya filed a report dated 18th February 2022 which was favourable and recommended the adoption of the child by the Applicants. She reported that the child had integrated well with the family. He was receiving good attention, love, respect and care from the Applicants.
8. An officer from the Directorate of Children’s Services conducted home visits and prepared and filed a report on 18th February, 2022. The officer noted that the Applicants are financially and emotionally capable of providing for the upkeep and education of the child. The officer noted that the Applicants had built a strong bond with the child. The child was healthy, happy, and well-groomed and that home the environment is conducive for the minor’s growth. The Officer recommended the adoption stating that it would be in the minor’s best interest to be adopted by the Applicants and that they had fulfilled the statutory requirements for adoption.
9. This is a local adoption and from the report of the Department of Children Services the Applicants have fulfilled all the legal requirements relating to the adoption of the child. The biological mother QAA signed a consent to give up the child for adoption on the 3rd March, 2020 and further swore an Affidavit on consenting to give up the child for adoption on the 29th March, 2020. In the same Affidavit the biological mother stated that the biological father to the child had never been involved in the child’s life since his birth, and had abandoned her at the pregnancy stage and even changed his phone contact. In light of that the Adoption agency could not obtain the father’s consent was verified by the Adoption Agency. The child was virtually present during the hearings and appeared to have bonded well with the Applicants. He looked healthy and was playful.
10. The Applicants have appointed DOO as the proposed legal guardian. He swore an Affidavit dated 26th October, consenting to the appointment.
11. Having considered all the foregoing, the most important issue in an Application of this nature is the best interest of the child. Article 53(2) of *the Constitution*, provides the overarching principle 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 interest 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 Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated 26th October, 2021 and order as follows:



- i. The Applicants, COO and CCA be and are hereby allowed to adopt Baby JB (the minor), who shall henceforth be known as NGO.
- ii. His date of birth shall be 3rd March, 2020.
- iii. His place of birth shall be Kisumu as reflected in the Birth Notification Serial No. xxxx.
- iv. DO is hereby appointed as the legal guardian in the event that the Applicants die, or are incapacitated by ill health.
- v. The Registrar General be and is hereby directed to enter this Order in the Adopted Children's Register.
- vi. The Director of Immigration be and is hereby authorized to issue the child with a Kenyan Passport.
- vii. The Guardian ad litem be and is hereby discharged.

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

L.A ACHODE

HIGH COURT JUDGE

In the presence of..... Advocate for the Applicants

