



**Z & another v The Change Trust Adoption Society (Adoption Cause E6 of 2021) [2022] KEHC 12097 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 12097 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E6 OF 2021  
JO NYARANGI, J  
APRIL 28, 2022**

**BETWEEN**

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

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

**AND**

**THE CHANGE TRUST ADOPTION SOCIETY ..... RESPONDENT**

**JUDGMENT**

1. The applicants herein moved this court vide Originating Summons application dated August 13, 2021 seeking the following orders:
  - a. Pursuant to Article 14(4) of the *Constitution of Kenya 2010* and section 11 of the *Children Act, 2001*, this honourable court be pleased to declare the child baby SA alias BO a Kenyan citizen by birth.
  - b. Pursuant to provisions of Section 159 of the *Children Act, 2001*, this honourable court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of section 158 of the *Children Act, 2001*.
  - c. The applicants SBZ and CJT be authorized to adopt Baby SA alias BO.
  - d. Upon making of the adoption order, the child to be known as TB.
  - e. Upon the making of the adoption order, SBZ & CJT be appointed legal guardians of the child as provided for by the provisions of Section 164 of the *Children Act, 2001*.
  - f. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption and the date of birth of the child as August 13, 2019 in the adopted children register as provided for by section 170 of the *children act, 2001*.



- g. The costs of this application be costs in the cause.
2. The application is premised on the statement in support of the application sworn on August 13, 2021 by the applicants jointly.
  3. The applicants are Kenyan citizens of sound mind born March 31, 1973 and January 1, 1973 respectively. They started cohabiting sometime the year 2003 and finally solemnized their marriage on August 12, 2006. Unfortunately, they have not been blessed with a child of their own. Their motivation to adopt the child is ignited by the desire to have a child of their own and enjoy the privilege of being parents. The applicants have a good income as both are employed by Kenya Ports Authority and Kenya Power and Lightning Company with a monthly salary of Kshs kshs 230,000 and Kshs 87,000 respectively.
  4. Concerning the child estimated to have been born on 13<sup>th</sup> August 2019 at Athi-River Sub-County Hospital to JK, he was given for adoption voluntarily by the mother. The same was reported at Athi River Police Station under OB/No/xx/xx/08/2019 and the baby placed under the care of Mahali Pa Maisha Children's Home. The child was later committed to the legal custody of Mahali Pa Maisha Children's Home by the Children's Court at Mavoko vide Protection and Care Cause Number 26/2019.
  5. The case committee at change trust in its sitting held on October 9, 2019 declared the child free for adoption and a certificate serial number xxxxx issued.
  6. Preceding the hearing, the court appointed LCM as guardian ad litem. Consequently, the court ordered the guardian ad litem and the County Director of Children Services to file their social inquiry report within 30 days.
  7. The guardian ad litem and the Director of Children Services filed their reports on November 18, 2021 and February 2, 2022 respectively recommending the adoption. During the hearing, the applicants urged the court to allow the application. They informed the court that they were aware of the consequences of adoption.
  8. Having fully considered the application, issues that emerge for determination are:
    - a. Whether the child is suitable for adoption
    - b. Whether the applicants are suitable to adopt the child
    - c. Whether the adoption is in the best interests of the child.
  9. On whether the child is suitable for adoption, he was given for adoption voluntarily by the mother. Among the reasons cited for giving out the baby for adoption was; her inability to take care of the child due to the fact that she had other children aged 13 and 14 years; her husband had deserted her after learning of her pregnancy and that, she was unemployed. To signify her consent, J signed a consent on August 14, 2019 with Little Angels Network and as a result the child was placed in the legal custody of Mahali Pa Maisha Children's Home by the Children's Court at Mavoko vide Protection and Care Cause Number 26/2019.
  10. The child is above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to Section 156 of the *Children's Act*. Further, Section 157 of the *children Act* does recognize any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. Thus it's my holding that the child is fit for adoption.



11. On whether the applicants are suitable to adopt the child herein, they are Kenyan citizens thus qualifying the process to be a local adoption. They are both 49 years of age which places them under the age bracket of not less than 25 years and not more than 65 years for an adoptive parent in compliance with section 158 of the *Children's Act*. The applicants have been described as financially stable as they are both employed with various assets as indicated in the report of the Director of Children Services. They are caring, loving and Christians with no criminal record.
12. Since the placement of the child in applicants' custody, the child has fully bonded. The applicants understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and admit that they will take care of the child just like their biological child. In my view the applicants have met the necessary requirements to adopt the baby.
13. 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* and Section 4(2) and (3) of The *Children's Act* which underscores the best interests of a child principle as the primary consideration before making any decision concerning a baby.
14. The child herein was surrendered willingly for adoption by his mother JK. Like any other child, he is in need of parental care and guidance. He needs basic necessities like food, shelter, education and clothing. He has fully integrated with the applicants. It is obviously in the best interests of the child that this adoption application be allowed.
15. Accordingly, the application is allowed with orders that:
  - a. The child is declared a Kenyan citizen by birth
  - b. The consent of biological parents or guardians is dispensed with.
  - c. The applicant is authorized to adopt Baby SA Alias B O who shall henceforth be known as TB.
  - d. The Registrar General is directed to enter the adoption order and estimated birth date of the child as August 13, 2019 in the adopted Children's Register.
  - e. The guardian ad litem is discharged.
  - f. JMM and JOO are appointed as legal guardians to the baby in case of any eventuality befalling the applicants.

**DATED, SIGNED AND DELIVERED IN MOMBASA ON THIS 28TH DAY OF APRIL, 2022.**

**J. N. ONYIEGO**

**JUDGE**

