



**In re EMO (Baby) (Adoption Cause E039 of 2021)
[2022] KEHC 12189 (KLR) (Family) (21 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 12189 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E039 OF 2021
LA ACHODE, J
APRIL 21, 2022**

IN THE MATTER OF

EMO APPLICANT

JUDGMENT

1. The Applicant EM approached this court through the Originating Summons dated 16th April of 2021 seeking to adopt Baby DO, a minor of the male sex, as a sole male Applicant. The Applicant is also seeking to adopt Baby LK in Adoption Cause E 038 OF 2021 and Baby JA in Adoption Cause E 037 OF 2021, both being siblings to the subject child in this cause.
2. The court records indicate that the Applicant is a Kenyan citizen who resides in [particulars withheld] Estate in Nairobi County. He is employed in a transportation company and professes the Christian faith.
3. The records before indicate that the minor in this matter was born to EK on 28th December 2006, as evinced by the Birth Certificate of serial No. xxxxx. His biological mother is not employed and the whereabouts of the child's father are unknown since the relationship between the father and mother ended immediately upon her pregnancy. The mother is not in gainful employment and is unable to cater for the child hence this adoption cause.
4. Prior to the adoption application, an officer from the Department of Children Services prepared a certificate of serial No. xxx, on 15th November, 2021 declaring the child free for adoption. Mr. FBO swore an Affidavit on 16th April, 2021 consenting to be appointed as the Legal Guardian, to discharge full parental responsibility for the child in the event of death or incapacitation of the Applicant.
5. An officer from the Directorate of Children Services conducted home visits to the Applicant's home in [particulars withheld] and prepared a report dated 17th November 2021. The report established that the Applicant lives in a three-bedroom house and that the child and his male sibling shared one



bedroom, but slept each in his own bed. The report also indicates that the child was at home at the time of the visit and was delighted and curious to know when the adoption process would be finalized. The officer noted that the minor had built a strong bond with the Applicant, and the minor reported that they go to different places together.

6. According to the report, the Applicant is concerned with the welfare of the child and has hired a nanny to take care of the minor and his siblings in the house. The report also indicated that the Applicant earns Ksh. 200,000 and is hence financially capable of providing for the upkeep and education of the child.
7. The report of the guardian ad litem was favourable and recommended the adoption. From the court records, EN (mother to the minor) voluntarily consented to offer the minor up for adoption through the Letter of Consent dated 29th October 2020. She stated that she is financially constrained since she is unemployed and is therefore unable to discharge her parental duties over the child. She also stated that the child's biological father had absconded from his parental duties having abandoned her when he learnt of the pregnancy. The child being 14 years old, consented to the adoption vide the letter dated 29th October, 2021.
8. It is important to note that the orders sought by the Applicant herein relate to a child. In law, in any matter concerning a child, the best interests of the child are what is of paramount importance as provided for under Article 53(2) of *the Constitution* of Kenya 2010. *The Constitution* of Kenya 2010 categorically 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.”

9. This is a kinship adoption since the Applicant is the minor's maternal uncle. I have perused the entire record and find that the Applicant has fulfilled all the legal requirements relating to the child's adoption. In the premise, I allow the prayers sought in the Originating Summons dated 16th April, 2021 and order as follows:
 - i. The Applicant EMO be and is hereby allowed to adopt baby DO and the child shall be known as DOB after the adoption.
 - ii. FBO be and is hereby appointed Legal Guardian of the child in case of the death or incapacitation of the Applicant.
 - iii. The child's date of birth is 28th December, 2006.
 - iv. The Registrar-General be and is hereby ordered to enter the name of the child in the Adopted Children's Register.
 - v. The Child was born in Kenya of Kenyan parents and is, therefore, a Kenyan by birth.
 - vi. The Director of Immigration is hereby authorized to issue the child with a Kenyan Passport.
 - vii. The guardian ad litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 21ST DAY OF APRIL, 2022.



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L.A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Applicants.

