



**Omer & another (Adoption Cause E098 of 2021)
[2022] KEHC 11934 (KLR) (Family) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 11934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

ADOPTION CAUSE E098 OF 2021

AO MUCHELULE, J

JUNE 23, 2022

IN THE MATTER OF

AHO 1ST APPLICANT
FHO 2ND APPLICANT

JUDGMENT

1. The applicants AHO and FHO are a couple aged 68 years and 49 years, respectively. The 1st applicant is an American Citizen who is a financial consultant while the 2nd applicant is a Kenyan who does business. The couple solemnized their marriage on the April 27, 2004 at Kadhi’s Court at Milimani Commercial Courts. They are blessed with two (2) adopted children. On August 11, 2021 they filed this originating summons dated July 30, 2021 seeking to adopt Baby A.(M).
2. Baby A.(M) is estimated to have been born on the September 21, 2014. The baby was abandoned by the mother in Garissa while she was alighting from a vehicle. She requested another lady to hold the baby and thereafter vanished without a trace. The lady reported the matter at Garissa Police station and was recorded as O.B. No. XX/21/9/2014. The baby was then admitted at Garissa Provincial Hospital for medical examination and treatment and subsequently discharged on the October 7, 2014. He was formally committed to the Garissa Children Rescue Centre by the Garissa Children Court in Protection and Care Case No. XX of 2014. Police efforts to trace the mother or relatives of the child were not successful. On May 5, 2021 the baby was declared free for adoption and Certificate No. - XXXX issued by the Little Angel’s Network. The applicants have been with the child since December 15, 2014 when the child was placed with them for foster care.
3. On December 2, 2021 the court appointed Jedidah Njoki Muigai as the guardian ad litem and ordered her and the Director of Children Services to separately carry out a social inquiry on the applicants to determine their suitability to adopt the child. The two reports were filed. Both recommended the applicants to be allowed to adopt the child. The reports found that the applicants were socially,



emotionally and financially stable and suitable to adopt the child. It was also found that the child had bonded well with them.

4. Section 156 (1) of the *Children Act*, No. 8 of 2001 provides that:

- “(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with this rules prescribed in that behalf.
- (2) Any person who contravenes the provision of subsection (1) of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand shillings or to both such imprisonment and such fine.”

Rule 18, of the *Children Adoption Regulations* provides that:

- “(4) Where the adoption society approves an adoption placement, it shall submit the report containing its decision to the National Adoption Committee, within fourteen days from the date its decision is made, requesting that the child be declared free for adoption pursuant to section 186 (7)(i) of the Act.
- (5) No person shall commence any arrangements for the adoption of a child unless and until the National Adoption Committee has, by written confirmation, declared the child free for adoption.”

5. While Section 158 (1) (a) of the Act provides that:

- (1) An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants—
 - (a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years;

6. The court notes that the Baby A.(M) was placed with the applicants prior to being declared free for adoption which was contrary to the above provisions. Secondly, the 1st applicant is an American citizen having attained the age of sixty-five years. The 2nd applicant is, however, a Kenyan citizen owning property within Kenya.

7. Nonetheless, considering that the child has not known any other home and parents since 2014, and considering that its best interests is the paramount concern of this court, I will allow the adoption. The applicants have demonstrated their capability to provide a conducive home and family environment in which the child will grow and develop. They will assume all parental rights and obligations of the biological parents of the child once adopted, and shall treat him as if he was born to them. They have been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit their property. The applicants shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child. The consent of the mother of the child is hereby dispensed with as he was found abandoned.

8. Having been satisfied that all the legal requirements for a local adoption under the *Children Act* have been met, the following orders shall issue:-

- a) the applicants A H O and F H O are hereby allowed to adopt Baby A.(M);



- b) Baby A.(M) shall henceforth be known as M E O;
- c) the child's date of birth shall be 21st September 2014, and shall be presumed Kenyan citizen having been abandoned in Garissa in Garissa County in Kenya;
- d) Khatra Said Haid and Rashid Abdi Hussein Eggeh are hereby appointed as the child's legal guardians in the event of the death or incapacity of the applicants before he is of full age and fully self-reliant;
- e) the Registrar-General is directed to enter this adoption in the Adopted Children Register; and
- f) the guardian ad litem is hereby discharged.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE 2022.

A.O. MUCHELULE

JUDGE

