



**BAO v Little Angels Network (Adoption Cause 14 of 2020)  
[2022] KEHC 12288 (KLR) (Family) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12288 (KLR)

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

**FAMILY**

**ADOPTION CAUSE 14 OF 2020**

**MA ODERO, J**

**JULY 29, 2022**

**BETWEEN**

**BAO ..... APPLICANT**

**AND**

**LITTLE ANGELS NETWORK ..... RESPONDENT**

**JUDGMENT**

1. Before this court is the Originating Summons dated 22<sup>nd</sup> October, 2019 by which the Applicant seeks the following orders:-

“1. Pursuant to Article 14(4) of *the Constitution* of Kenya, 2010 and Section 11 of the Children’s Act 2010, this Honourable court be pleased to declare that the Child is a Kenyan Citizen by birth.

2. Pursuant to the provisions of Section 159 of the Children’s Act, 2001, this Honourable court be pleased to dispense with the requirements of consent to the adoption as required by the provisions of Section 158 of the Children’s Act.

3. That the Applicant BAO be authorized to adopt J Alias JB Alias Abandoned Baby Girl (the child).

4. Upon making of the Adoption Order, the child be known as RB.

5. Upon the making of the Adoption Order, HOO be appointed as the legal Guardian of the Child as provided for by the provision of Section 164 of the Children’s Act, 2001.

6. Upon the making of the Adoption order, the Registrar-General do make an entry recording the adoption and the estimated date of birth of the child as 2<sup>nd</sup> August 2016 in the Adopted Children Register as provided for by Section 170 of the *Children Act*, 2001.



7. The costs of this Application be in the cause”.

2. The application was supported by the statement of even date sworn by the Applicant.
3. The Applicant told the court that she is a single woman who has never been married and has no biological child of her own. She now wishes to adopt a girl child who is aged five (5) years. The Applicant told the court that she fully understands the legal implications of an adoption order. She undertakes to accord to the subject child all rights due to a biological child including the right to inherit.

### **Analysis and Determination**

4. I have carefully considered this application for adoption, the various Affidavits and Reports on record as well as the relevant law. I have also considered the evidence adduced in open court. The preliminary requirements for the making of an Adoption Order are set out in Section 156(1) of the Children’s Act 2001 which provides as follows:-

“ 159 (1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”

5. The subject child was born on 2<sup>nd</sup> August 2016. She is now five (5) years old and is way above the six (6) months age limit provided for by law.
6. The Little Angels Network have annexed to their report the original copy of their certificate serial Number 002043 dated 10<sup>th</sup> December 2018 declaring the child Free For Adoption. Accordingly, I am satisfied that all the legal pre-requisites for an adoption order have been met.
7. The duty of this court is to analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan Citizen as evidenced by the copy of her National Identify Card annexed to the Summons (Annexure ‘BA-2’). The Applicant told the court that she has never been married and has no biological child hence her desire to adopt a child.
8. The Applicant is gainfully employed as a Teller with Stanbic Bank and earns a salary of approximately Kshs 62,000 monthly which is sufficient to enable her provide for the needs of a growing child. Aside from her employment, the Applicant also earns rental income from houses she has constructed in Kisumu City.
9. The Applicant told the court that she has informed her family of her intention to adopt a child and that they are supportive. Indeed, she has nominated her elder brother HOO as the legal Guardian for the child.
10. The said HO has signed a consent dated 15<sup>th</sup> January 2020 confirming his consent to act as legal Guardian. The Applicant is a Christian and intends to raise the child in the Christian Faith.
11. The Applicant was examined by a medical doctor and was found to be physically and mentally fit. The Report dated 15<sup>th</sup> April 2018 from The Adoption Agency indicates that the Applicant underwent pre-adoption counselling on 12<sup>th</sup> March 2018.
12. The Applicant has also annexed to the summons a copy of a clearance certificate issued to her by the Directorate of Criminal Investigations (Annexure ‘BA ‘5’) proving that she has no criminal record. All in all, I am satisfied that the Applicant is a suitable adoptive parent.



13. As stated earlier the subject child is believed to have been born on or about 2<sup>nd</sup> August 2016. The baby was abandoned immediately after her birth along the Eldama Ravine – Eldoret Road. A passing boda boda rider rescued the child and took her to one of the village elders. The abandonment was reported at Kaptagat Police Station vide OB Number 17 of 2<sup>nd</sup> August 2018.
14. Thereafter on 17<sup>th</sup> August 2018 the Eldoret Children’s Court committed the child to Neema Childrens Home vide Protection and Care Case Number 174/2016. On 27<sup>th</sup> January 2018 the child was placed into the custody of the Applicant under a Foster Care Arrangement.
15. Following the abandonment of the child the police efforts to trace the biological mother of the child have borne no fruit. No person has come forward to claim the child. The Final Police letter dated 6<sup>th</sup> December 2018 is annexed to the summons.
16. Given that this child was abandoned by her biological mother there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances I dispense with the requirement for consent in line with Section 159(1)(e) of the Children’s Act.
17. Article 14 of *the Constitution* of Kenya 2010 deals with issue of Citizenship. Article 14(4) provides as follows:-

“(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”
18. The subject child was abandoned at birth in Eldama Ravine within the Republic of Kenya. She is therefore presumed to be a citizen of Kenya by birth and I do so declare.
19. In deciding upon any matter involving a child Courts are obliged to give priority to the best interests of the said child. Section 4(2) of the *Children Act* 2001 provides:-

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (own emphasis)
20. The subject child has lived with the Applicant in her home since January 2019 a period of about two (2) years. Undoubtedly, the child has bonded with the Applicant. This is the only parent/family the child knows. I was able to see the child online. She was a healthy cheerful girl who gave her name as RB. The child was excited to be on the virtual platform and was smiling and energetically waving at the Judge. The child was obviously very comfortable in the company of the Applicant. She was articulate and was able to answer basic questions about herself. She stated that she is in class Two Blue and that her best friend is ‘Veny’.
21. A home visit was conducted by the Directorate of Children’s Services on 15<sup>th</sup> October 2021. The Applicant was found to be residing in a two bedroomed Flat in Umoja Innercore area of Nairobi County. The home is close to various social amenities which include schools, hospitals, markets etc. The Applicant has employed a Nanny to assist in caring for the child. The Home environment was found to be conducive.
22. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Directorate of Children’s Services – All the reports were positive and all recommended the adoption without any reservations.



23. This is a child who was abandoned at birth. She faced an uncertain future living in Children's Homes and other similar institutions. This adoption provides the child with the opportunity to be raised in a stable and loving home environment. This will certainly serve the best interest of the child. Finally, I do allow this application and make the following orders: -

i. The Applicant BAO is authorized to adopt the child known as J alias JB alias Abandoned Baby Girl.

ii. Upon adoption the child to be known as RB.

iii. The child is declared Kenyan Citizen by birth and is entitled to all the rights and benefits in respect thereof.

iv. HOO is appointed as Legal Guardian of the child as provided for by the provisions of section 164 of the Children's Act 2001.

v. The Registrar General is directed to make appropriate entries in the Adopted Children's Register.

vi. No orders on costs.

**DATED IN NAIROBI THIS 29<sup>TH</sup> DAY OF JULY 2022.**

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**MAUREEN A. ODERO**

**JUDGE**

