



REPUBLIC OF KENYA



**In re NB (Child) (Adoption Cause E100 of 2022)
[2022] KEHC 12854 (KLR) (Family) (5 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 12854 (KLR)

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

ADOPTION CAUSE E100 OF 2022

MA ODERO, J

AUGUST 5, 2022

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY AMN AND IK

IN THE MATTER OF

AMN 1ST APPLICANT

IK 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated June 28, 2022 by which the Applicants seek the following orders:-
 - “1. Spent.
 2. That the Applicants ADMN and IK be authorized to adopt NB.
 3. That upon adoption, the child be known as NSM.
 4. That the Registrar General be directed to enter this adoption into the register of adoptions.
 5. That the child shall be presumed to be Kenyan citizen and be accorded all rights of immigration that accrue to Kenyan citizens.”
2. The summons was supported by statement of even date sworn by both Applicants. The matter was canvassed by way of oral evidence on the virtual platform.
3. The Applicant ADMN and IK are a couple got married to each other under Gikuyu/Meru customary Law since November 15, 2015. They later formalized their union at the office of the Registrar of Marriages in 2022.



4. The couple have not borne any biological child together. They now seek to adopt a girl child aged 11 years old. The Subject child is the biological daughter of the 2nd Applicant.
5. The Applicants both confirm that they understand the legal implications of an adoption order. They undertake to accord to the Subject child all rights due to a biological child including the right to inherit.

Analysis and determination

6. 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.”

7. The Subject child was born on December 21, 2010. Therefore the child is now aged eleven (11) years well above the age limit provided for in law.
8. Annexed to the Report filed by Change Trust Adoption Agency is the original Certificate Serial Number 00473 dated June 10, 2022 declaring the child Free for Adoption. Accordingly I am satisfied that the legal prerequisite for an adoption order have been met.
9. The Applicants herein are both Kenyan citizens as proved by the annexed copies of their National Identity Cards (Annexure 'AN1'). They are a married couple having entered into a Gikuyu/Meru customary Marriage in November 2015. The couple later solemnized their union through a civil marriage conducted in the office of the Registrar on March 6, 2022. A copy of their Marriage Certificate Serial Number xxxxxx is annexed to the summons (Annexure 'AN2').
10. The Applicants are both gainfully employed and state that they have sufficient funds to provide for the needs of the child. The 1st Applicant is a diplomat employed by the Ministry of [Particulars withheld]. He has annexed copies of his pay slips indicating that he earns a net income of approximately Kshs 80,000 per month. The 2nd Applicant is a business woman. I am satisfied that the couple are financially stable and are able to provide for the needs of a growing child.
11. The Applicants state that they are Christians and intend to raise the child in the Christian faith. They have each annexed copies of clearance certificates issued by the Director CID confirming that neither has a criminal record, (Annexure 'AN5'). Both Applicants were examined by a Doctor and both were found to be physically and mentally fit. Their medical reports appear as (Annexure 'AN7') to the summons.
12. The Applicant told the court that their extended families are aware of and support their intention to adopt the Subject child. Indeed, they have appointed the brother of the 2nd Applicant CGN and his wife MW as the legal Guardians for the child. The two Guardians have both signed a letter of consent to act as legal guardian dated June 9, 2022 (Annexure AN '8').
13. The 2nd Applicant is the biological mother of the Subject child whilst the 1st Applicant, married the 2nd Applicant in November 2015 and has taken up parental responsibility for the child for the past seven (7) years. All in all, I am satisfied that the Applicants are suitable adoptive parents.



14. The Subject child is a girl child who was born in Iran on December 21, 2010. Annexed to the summons is a Certificate of Birth of a Kenyan Citizen occurring Abroad Serial Number xxxxx. The child was born to the 2nd Applicant and her Iranian Husband. However, the Childs biological parents divorced in the year 2013. Annexed to the summons is a copy of the Certificate of Permanent Divorce dated August 15, 2013. The 2nd Applicant returned to Kenya with her child in the year 2014. The mother and child have had no communication with the Childs biological father since 2014.
15. Article 14 (1) of the *Constitution of Kenya* dealing with citizenship provides as follows:-
- “ 14.
- (1) A person is a citizen by birth if on the day of the person’s birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.” (own emphasis)
16. In this case the mother of the Subject child is a citizen of Kenya. Therefore the child despite having been born in Iran acquires citizenship from her mother. I therefore declare that the Subject child is a citizen of Kenya.
17. 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, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (own emphasis)
18. The subject child was born in Iran but came to Kenya aged three (3) years following the divorce of her parents. The child has lived with the 2nd Applicant who is her biological mother all her life. Upon the marriage of the 2nd Applicant to the 1st Applicant the couple took in the child and have raised her as their own to date. This is the only family the child knows. She views the 1st Applicant as her Father.
19. Section 76(3)(a) of the *Children Act* which provides:-
- “ (3) Where the court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters—
- (a) The ascertainable feelings and wishes of the child concerned with reference to the child’s age and understanding.” (own emphasis)
20. I was able to interview the child online. She was old enough to express an opinion and to speak for herself. She was a happy and confident 11 year old who clearly answered all questions put to her. The child told the court that she lives in Kasarani with her parents. The child stated that she attends [Particulars withheld] Academy where she is in Grade 5. In my opinion, the child looked healthy and was well adjusted. I have no doubt that she is receiving proper and loving care from the Applicants.
21. I am mindful of the fact that section 158(4)(a) of the *Children Act 2011* requires consent for any adoption be obtained from the biological parents of the child. However according to the Childs mother she parted ways with the Childs father following their divorce in the year 2013. The father of the child has made no effort to seek for the child and has had no communication with the child or her mother



for the past seven (7) years. The 2nd Applicant told the court that as far as she is aware the Child's father is in Iran.

22. It is clear that the biological father has effectively abandoned his daughter. He has not sought to see or communicate with the child since 2013. Section 159 (1)(a) of the Children Act 2011 provides that-

“Power to dispense with consent

(1) The court may dispense with any consent required under paragraphs (a) (b) and (c) of sub section (4) of section 158 if it is satisfied that –

a. In the case of the parents or guardian of the child, that he has abandoned, neglected persistently ill-treated the child.”

23. Accordingly I waive the requirement for consent of the biological father in line with section 159 (1) (a) of the Act.

24. I have perused the Reports filed by the Guardians Ad litem, the Adoption Agency as well as the Director Children's Services. All are positive and all recommend the adoption.

25. A home visit was conducted by the Children Officer. The family live in a two bedroomed Apartment in [Particulars withheld] Estate, Kasarani. The home was found to be spacious and well secured and the child had her own room. The Applicants have employed a Nanny to stay with the child while they are away at work.

26. This is a Kinship adoption. The husband of the Child's biological mother wishes to adopt the child in order to regularize her position as a daughter of the family. The 1st Applicant has secured a posting in Canada and wishes to travel with his entire family. The child by this adoption will become a member of a loving family and will be raised in a stable family environment. This certainly serves the best interests of the child. Accordingly, I do allow this application and make the following orders:-

1. The Applicants ADMN and IK are hereby authorized to adopt the child NB.
2. Upon adoption, the child will be known as NSM.
3. The child is declared to be a citizen of Kenya and is entitled to all the rights and benefits thereto.
4. CGN and MW are appointed as the legal Guardians for the child.
5. The Registrar General is directed to make the relevant entry in the Adopted Children Registrar.
6. No orders on costs.

DATED IN NAIROBI THIS 5TH DAY OF AUGUST 2022.

.....
MAUREEN A. ODERO
JUDGE

