



**In re EB (Baby) (Adoption Cause E065 of 2022)
[2022] KEHC 13375 (KLR) (Family) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13375 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E065 OF 2022
MA ODERO, J
SEPTEMBER 23, 2022
IN THE MATTER OF CHILDREN ACT, 2001
IN THE MATTER OF CHILDREN (ADOPTION) REGULATIONS 2005
AND
IN THE MATTER OF ADOPTION OF BABY EB**

IN THE MATTER OF

**PNK 1ST APPLICANT
LMM 2ND APPLICANT**

JUDGMENT

1. Before court is the originating summons dated May 9, 2022 by which the applicants seek the following orders:-
 - “ 1. That the applicants be and is hereby authorized to adopt EB, minor herein.
 2. That upon adoption, the child be known as EBN.
 3. That the Registrar General be ordered to make appropriate entries in the Adopted Children’s Register in respect of baby EBN.
 4. That the court be pleased to appoint AWK and IMK as the legal guardian of Baby EBN upon granting of the adoption orders.
 5. That baby EBN be considered a Kenyan citizen.



6. That the court be pleased to make any further orders it deem necessary.”
2. The application was supported by the statement of even date sworn by both applicants. The matter was canvassed by way of oral evidence on the virtual platform.
3. The applicants are a couple who got married to each other in the year 2008. Their union has not to date been blessed with any offspring. They now wish to adopt a child in order to complete their family. The applicants both confirmed to the court that they understand the legal implications of an adoption order. They undertake to accord to the child all rights due to a biological child including the right to inherit.

Analysis and Determination

4. The prerequisites for adoption are set out in section 156(1) of the *Children Act* 2001, which provides as follow: -

“ 156(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (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 March 14, 2021. A copy of the Childs Birth Certificate Serial Number XXXXXXXX is annexed to the summons (exhibit – 1). Therefore, the child is now aged about 1½ years old and is above the six (6) week age limit provided for in law.
6. Kenya Childrens Home Adoption Society which is a registered Adoption Agency have annexed to their report the original copy of their certificate Serial Number xxx dated November 24, 2021 declaring the child free for adoption. Accordingly, I am satisfied that all the legal prerequisites for an adoption order have been met.
7. The duty of this court is to analyze the evidence on record and determine whether the applicants are suitable adoptive parents. The applicants are both Kenyan citizens. They have annexed to the summons copies of their national Identity Cards. (exhibit 2 (a) and exhibit 2 (b)).
8. The applicants are a couple who began to cohabit as man and wife in the year 2008. They later solemnized their union on August 23, 2008 as evidenced by the copy of their certificate of marriage Serial Number xxxxxx which is annexed as exhibit 3 to the summons.
9. The couple have not borne any child together and now seek to adopt the subject child in order to complete their family.
10. The applicants are both in gainful employment. The 1st applicant runs (Particulars withheld) business whilst the 2nd applicant works for (Particulars withheld). She has annexed to the summons a copy of her payslip (exhibit – 9) as well as copies of bank statements for her account held at Co-operative Bank (exhibit – 10).
11. Together the applicants realize a joint income of approximately Kshs 50,000 which is sufficient to enable them provide for the needs of the child.
12. The applicants are both christians and intend to raise the child in the christian faith. They have annexed to the summons a recommendation letter dated July 18, 2021 written by Pastor JM the Pastor in charge of [Particulars withheld] Church – Mutulani (Exh – 12).



13. The applicant were both examined by a doctor and were found to be physically and mentally fit. They have both annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations proving that neither has a criminal record.
14. The applicants told the court that their extended families are aware of and support their intention to adopt the child. Indeed the applicants have appointed as legal guardians the 1st applicants brother AWK and his wife IMK. Both legal guardians have signed a consent dated May 9, 2022 confirming their willingness to act as legal guardians for the child. All in all I am satisfied that the applicants are suitable adoptive parents.
15. The subject child was abandoned aged only one (1) day old at (Particulars withheld) ,Thika. The baby was rescued by a good Samaritan and the abandonment was reported at Kiandutu Police Station vide OB Number x of March 15, 2021. The baby was then rushed to Thika Level 5 Hospital for medical attention.
16. On April 15, 2021 the Thika Childrens Court committed the child to Macheo Childrens Home for care and Protection. On December 21, 2021 the child was released into the custody of the Applicants under a Foster Care Agreement.
17. Article 14 of the Constitution of Kenya, 2010 deals with the question 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 found aged only one (1) day old, abandoned in Thika, Kiambu County in the Republic of Kenya. Efforts by police to trace the biological mother/relative of the child have borne no fruit. No person has come forward to claim the child. The Final Police Letter dated October 28, 2021 from Kiandutu Police Station is annexed to the summons (exhibit – 22).
19. Since this child was abandoned at only one (1) day old in the Republic of Kenya I do declare him to be a Kenyan citizen by birth. Given the fact of abandonment there exists no know person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 159 (1) (a) of the Children Act 2001
20. 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 interest of the child shall be a primary consideration”. (Own emphasis)
21. This is a child who was abandoned shortly after birth. He faced an uncertain future living in childrens homes and other similar institutions. This adoption accords the child the right to be raised in a loving and stable home environment.
22. The child has lived with the applicants since December 2021. I have no doubt he has bonded with the applicants. This is the only family the child knows. I was able to see the child online. He was a healthy baby and was comfortable in the arms of his parent.



23. A home visit was conducted by the childrens officer. The applicants reside in a one bedroomed house in Githurai Estate. The house is connected to both water and electricity, is well furnished and was found to be a conducive environment to raise the child. I have perused the reports prepared by the Adoption Agency, the *Guardian Ad litem* and the Director Childrens Services. All three reports recommend the adoption. I find that this adoption does serve the best interest of the child.
24. Finally, I do allow this application and I make the following orders:-
1. The applicants PNK and LMM are authorized to adopt the child known as EB.
 2. Upon adoption, the child be known as EBN.
 3. The child is declared to be a citizen of Kenya by birth and entitled to all the rights and benefits in respect thereto.
 4. The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
 5. AWK and IMK as the legal guardian of the child.

DATED IN NAIROBI THIS 23RD DAY OF SEPTEMBER 2022.

.....

MAUREEN A. ODERO

JUDGE

