



**In re Adoption of ES a.k.a OP (Child) (Adoption Cause E025 of 2022)
[2022] KEHC 13321 (KLR) (Family) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13321 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E025 OF 2022
MA ODERO, J
SEPTEMBER 23, 2022
IN THE MATTER OF THE CHILDRENS ACT 2020
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION OF ES AKA OP (CHILD)
BY
CNK1ST APPLICANT
MCA....2ND APPLICANT**

JUDGMENT

1. Before court is the originating summons dated February 17, 2022 by which the applicants seek the following orders:-
 - “1. That CNK and MCA of Kenyan National Identity Card Number xxxx and xxxx respectively be authorized to adopt the child baby ES aka OP who is presumed to be born on October 16, 2019.
 2. That upon adoption, the child be known as CNN.
 3. That COO of Kenyan National Identify Card Number xxxx and SAA of Kenyan National Identify Card Number xxxx be appointed as the legal guardians of the child; baby ES aka OP.
 4. That the Registrar General be directed to make the appropriate entries in the Adopted Children’s Register”.
2. The application was supported by the statement of even date sworn by the applicants. The matter was canvassed by way of oral evidence on the virtual platform.



3. The applicants are a couple who have been married since the year 2018. They have two (2) biological children together one daughter aged two (2) years and at the time of the hearing the couple had just been blessed with a baby who was only 21 days old.
4. The applicants now wish to adopt the subject child, a boy child who was born in October 2019. They state that they have always desired to adopt a child in order to provide a needy child with a home. The applicants both confirm that they are fully aware of the legal implications of an adoption order. They undertake to accord the subject child all the rights due to a biological child including the right to inherit.

Analysis and Determination

5. The legal prerequisites for Adoption are set 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.”
6. The subject child born at the Kenyatta National Hospital (KNH) on October 16, 2019. He is therefore now aged 2½ years old and is above the six (6) week age limit proved for in law.
7. Kenya Children’s Home Adoption Society which is a registered adoption agency have annexed to their report their certificate serial Number xxxx dated 128th August 2021 declaring the child Free for adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
8. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. The applicants are both Kenyan citizens as evidenced by the annexed copies of their National Identity Cards (Annexures ‘CM-1’).
9. As stated earlier the applicants are a couple who began to cohabit as man and wife in the year 2018. The couple later solemnized their union on December 10, 2020 at the CITAM Church in Karen. They have annexed a copy of their marriage certificate serial Number xxxx (Annexure ‘CM-2’). The couple have two (2) biological children. The first is a daughter CNN who was born on July 5, 2020. A copy of their daughter’s birth certificate serial number xxxx is annexed to the summons (Annexure ‘CM-4’). The applicants also informed the court that they had just been blessed with a baby who was only 21 days old on the hearing date.
10. The applicants are both in gainful employment. The 1st respondent works as a software engineer with [particulars withheld] whilst the 2nd applicant who is also a software engineer and is self employed. They have annexed copies of their 1st applicant’s payslips as well as copies of bank statements from Kenya Commercial Bank Ongata Rongai Branch (Annexure ‘CM-3’). I find that the applicants are financially stable and have the capacity to provide for the needs of their three (3) children.
11. The applicants are both committed christians and intend to raise the child in the christian faith. They have annexed to the summons a recommendation letter dated February 20, 2021 written by Rev Ruth Otieno of the CITAM Karen Church.
12. Both the applicants were examined by a doctor and were found to be physically and mentally fit. They have annexed clearance certificates issued to them by the Directorate of Criminal Investigations (Annexure ‘CM-7’) proving that neither has a criminal record



13. The applicants told the court that their extended families fully support their intention to adopt the child. They have appointed a couple who are close family friends COO and SAA as legal guardians for the child. The nominated legal guardians have both signed an affidavit dated February 17, 2022, confirming their willingness to be appointed as the legal guardians of the child. All in all, I find that the applicants are suitable adoptive parents.
14. The subject child is was born at the Kenyatta National Hospital on October 16, 2019. The child was born to a Ugandan mother, who was a psychiatric patient at Mathare Hospital. The child's mother was referred to Kenyatta National Hospital due to medical complications where she delivered the child. After delivery, the mother was returned to Mathare Hospital to continue with her treatment. The child remained admitted in the new born unit at Kenyatta National Hospital.
15. Despite later being released from Mathare Hospital upon completion of her treatment, the child's biological mother never returned to Kenyatta National Hospital to collect her baby. Efforts by officials at Kenyatta National Hospital to call the mother and her brother to come and collect the child were ignored. The mother later disappeared and could no longer be traced, effectively abandoning the child at Kenyatta National Hospital.
16. A report dated May 27, 2020 detailing the history of the child as well as the efforts made to trace the parents/relatives of the child is annexed to the summons (Annexure 'CM-5')
17. The child remained abandoned at Kenyatta National Hospital for seven (7) months after which a report was made to Kenyatta Police Post *vide* OB Number 10 of May 26, 2020. On May 29, 2020 the child was committed to New Life Home Trust for care and protection. Thereafter, on October 1, 2021 the child was released into the custody of the applicants under a foster care agreement.
18. Article 14 of the [*constitutions 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”.
19. The subject child was abandoned shortly after birth at Kenyatta National Hospital in Nairobi within the Republic of Kenya. I find that the child is a citizen of Kenya by birth and I so declare.
20. Given the fact of his abandonment there exists no known person from whom consent of 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*](#).
21. 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)
22. This is a child who was abandoned by his biological mother. He faced an uncertain future living in children's homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable home environment.
23. I was able to see the child online. He was a healthy active toddler who was clearly at ease in the company of the applicants. I have no doubt that the child has bonded with the applicants whom he already views



as his parents. I have perused the reports prepared by the adoption agency, the guardian ad litem, and the director childrens services. All three reports are positive and all recommend the adoption.

24. A home visit was conducted by the children's officer. The applicants resides in their home in the Nkoroi area of Ongata Rongai. The home is a three bedroomed house and was found to be spacious and well furnished and provides a conducive environment for the child. Finally, I find that this adoption does serve the best interests of the child and I make the following orders:-

1. The applicants CNK and MCA are authorized to adopt the child ES aka OP.
2. Upon adoption the child will be known as CNN.
3. The child is declared to be a Kenyan citizen by birth and entitled to all the rights, privileges and benefits consequent thereto.
4. The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
5. COO and SAA are appointed as the legal guardians of the child.

DATED IN NAIROBI THIS 23RD DAY OF SEPTEMBER 2022.

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MAUREEN A. ODERO

JUDGE

