



REPUBLIC OF KENYA



KENYA LAW
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**In re BBJ (Baby) (Adoption Cause E036 of 2022)
[2022] KEHC 13318 (KLR) (Family) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13318 (KLR)

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

FAMILY

ADOPTION CAUSE E036 OF 2022

MA ODERO, J

SEPTEMBER 22, 2022

IN THE MATTER OF THE CHILDREN'S ACT (ACT. 8 OF 2001)

AND

IN THE MATTER OF BABY BBJ

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

IN THE MATTER OF

WON 1ST APPLICANT

HNK 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated 1st February 2022 by which the Applicants seek the following orders:-
 1. That the Applicant WON and HNK, be allowed to adopt the child currently identified as Baby BJ.
 2. That henceforth, the child be renamed JBO.
 3. That the child's date and place of birth be declared to be 14th January 2016 at Narok.
 4. That the child be presumed to be a Kenyan Citizen by birth, and consequently entitled to all the rights and benefits in respect thereof.
 5. That consent of the child's biological parents/guardians be dispensed with.



6. That AKS and SNK be appointed as the Legal Guardians of the child, in the event that the Applicants herein are incapacitated or any way unable to discharge their parental obligations.
 7. That the Guardian ad litem be discharged.
 8. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register.
 9. That this court do issue such further orders as are in the interest of Justice.”
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 got married in the year 2001. The couple have no biological children of their own. They now seek to adopt a boy-child in order to complete their family.
 4. 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

5. The prerequisites for Adoption are set in Section 156(1) of the Children's 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 was born on 14th January 2016. A copy of the Child's Birth Certificate Serial Number xxxx is annexed to the summons (Annexure WN '4'). Therefore the child is now aged six (6) years old way above the six (6) week age limit provided for by law.
7. Little Angels Network which is a registered Adoption Agency have annexed to their Report a copy of their certificate Serial Number xxxx dated 8th October 2016 declaring the child Free for Adoption. Accordingly, I am satisfied that all the legal prerequisites for an adoption order have been met.
8. The duty of this court is to analyze the evidence adduced before it to determine whether the Applicants are suitable adoptive parents. The Applicants are both citizens of Kenya as evidenced by the copies of their National Identity cards, which have been annexed to the summons (WN2 (a) and WN2 (b)).
9. The Applicants are a couple who got married at the xxxxx on 1st December 2001. They have annexed to the summons a copy of their marriage Certificate Serial No. xxxx (Annexure 'WN3'). They have not been blessed with any children of their own. The couple now wish to adopt a child in order to complete their family and out of their desire to provide a needy child with a home.
10. The Applicants are both in gainful employment. The 1st Applicant is a Pastor and is the founder of [Particulars Withheld] Ministry. They have annexed to the summons a recommendation letter from the Administration Minister of the Church, (Annexure WN5(a))
11. The 2nd Applicant runs her own Fashion Design business. She has annexed a copy of the business permit for [particulars withheld] (Annexure WN5(b)). Together the Applicants realize a monthly income of approximately Ksh 100,000 which is sufficient to enable them provide for the needs of the child.



12. Aside from their employment the Applicants have investments and own several properties. They have annexed copies of their Bank Statements (Annexture ‘WN6(a)) and copies of ownership documents for the properties they own (Annexture WN (b)). All in all I find that the Applicants are financially stable.
13. The Applicants are Christians and intend to raise the child in the Christian Faith. The 1st Applicant runs a Christian Ministry. They were both examined and found to be physically and mentally fit. The applicants have annexed copies of clearance certificate issued to each by the Directorate of Criminal Investigations proving that neither has a criminal record (Annexture WN 8(a) and WN8 (b))
14. The Applicants told the court that their extended family are aware of and support their intention to adopt the child. They have appointed their long time family friends AKS and SNK as legal Guardians for the child. The said legal Guardians have both signed the Affidavit of consent dated 1st February 2022 (Annexrure WN 10 (a)) confirming their willingness to be appointed as legal Guardians for the child. All in all I am satisfied that the applicants are suitable adoptive parents.
15. The subject child was born on 14th January 2016. The child was abandoned by his biological mother at the age of two (2) months. The ‘alleged mother’ handed the baby to one ‘NM pretending that she was going to collect her luggage. The mother never returned to reclaim the child. The said NM later reported the abonnement at Narok Police Station vide OB Number xx of 15th March 2016. On 22nd March 2016 the Narok Children’s Court committed the child to Nest Children’s Home for care and Protection. On 28th April 2017 the child was released into the custody of the Applicants under a Foster Care Agreement.
16. 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.
17. The subject child was abandoned at the age of two (2) months within Narok County in the Republic of Kenya. I therefore declare the child to be a citizen of Kenya by birth.
18. The subject child was abandoned in March 2016. To date no person has come forward to claim the child. Police efforts to trace the biological mother/relatives of the child have not borne any fruit. A Final Police letter dated 11th September 2017 confirms this fact (Annexture ‘WN 19’). Given the facts of his abandonment, there exists no known person form who consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 159(1)(a) [Children Act](#) 2001
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, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”. (Own emphasis)
20. This is a child who was abandoned shortly after his birth. He faced an uncertain future living in various Children Homes. This adoption accords the child the opportunity to be raised in a loving and stable



home environment. The child has lived with the Applicants for the past four (4) years. This is the only family he knows. The child refers to the Applicants as his parents.

21. I was able to see and speak to the child online. He was an articulated and confident six (6) year old. The child readily answered questions about himself. He appeared happy and healthy and was comfortable in the company of the Applicants.
22. I have perused the reports prepared by the Adoption Agency, the Guardian Ad litem and the Director Children's Services. All three reports are positive and all recommend the adoption. A Home visit was conducted on 10th June 2022 by the Children's Officer. The Applicants reside in a two bed-roomed home in Mountain View Estate. The home is within a secure compound, which has 24 hour security and is close to facilities like schools, shops, hospitals etc. The environment was found ideal for raising a young child.
23. Finally I find that this adoption will serve the best interest of the child. As such I do allow this application and I made the following orders:-
 1. The Applicant WON and HNK are authorized to adopt the child known as baby BJ.
 2. Upon adoption the child will be known as JBO.
 3. The child is declared to be a Kenyan citizen 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. AKS and SNK are appointed as the legal Guardians for the child.

DATED IN NAIROBI THIS 22ND DAY OF SEPTEMBER 2022.

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MAUREEN A. ODERO

JUDGE

