



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby EK aka BPJ (Adoption Cause E125 of 2021)
[2022] KEHC 13506 (KLR) (Family) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E125 OF 2021
MA ODERO, J
SEPTEMBER 22, 2022
IN THE MATTER OF ADOPTION OF BABY EK AKA BPJ
BY
VJM.....APPLICANT**

JUDGMENT

1. Before court is the originating summons dated August 31, 2021 by which the applicant VJM seeks the following orders:-
 - “ 1. That the applicant herein is hereby authorized to adopt BABY EK and the child shall be called BPJ
 2. That the court be pleased to appoint JMJ and WKP as the legal guardians of BABY EK aka BPJ upon granting of the adoption order.
 3. That the Registrar General be ordered to make appropriate entries in the Adopted Children’s Register in respect of BABY EK aka BPJ
 4. That BABY EK aka BPJ be considered a Kenyan citizen.
 5. That the court be pleased to make any further orders it deem necessary in the best interest of the minor.”
2. The application was supported by the statement of even date sworn by the applicant. The matter was canvassed by way of oral evidence in open court.
3. The applicant is a single woman who has never been married and who has not borne any biological child. She sought to adopt a girl child aged three (3) years old. The applicant confirmed to the court that she understood the legal implications of an adoption order. She undertook to accord to the subject child all rights due to a biological child including the right to inherit.



Analysis and Determination

4. The legal requirement for adoption are set out 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.”

5. The subject child was born on April 7, 2019. A copy of the Acknowledgment of Birth serial number xxxxx appears as Annexure 13 to the summons. The child is therefore now aged three (3) years old, which is above the six (6) weeks age limit provided in law.
6. Kenya Childrens Home Adoption Society which is a registered Adoption Agency have annexed to the summons (Annexure 20) a copy of their certificate serial number xxxxx dated March 17, 2021 declaring the child free For adoption. Accordingly, I find that all the legal prerequisites for adoption have been met.
7. The duty of this court is to determine on the basis of the evidence presented before it, whether the applicant is suitable adoptive parent. The applicant is a Kenyan citizen. Annexure No 1 is a copy of her national identify card. The applicant is a single woman in her early forties who has never been married and has no biological child of her own. Hence the desire to adopt a child in order to complete her family.
8. The applicant is a Christian and intends to raise the child in the Christian faith. She has annexed to the summons (Annexure No 11) a copy of a letter of recommendation dated August 23, 2018 written by Bishop CJMM of the SWA where the applicants is a congregant.
9. The applicant is in good mental and physical health and has no criminal record. She is in stable employment and works as a Production supervisor with Karatasi Industry. The applicant has annexed copies of her payslip (Annexure No 5) as well as a copy of her Bank Statement with Equity Bank. I am satisfied that the applicant is financially stable and is able to provide for the needs of a growing child.
10. The applicant told the court that her family are aware of and support her decision to adopt the child. She has appointed JMJ and WKP as legal guardians for the child. The said legal guardians have both signed a consent dated August 31, 2021. All in all satisfied that the applicant is a suitable adoptive parent.
11. The subject child was born at Mbagathi District Hospital in Nairobi County. Immediately upon birth, the child's biological mother absconded from the hospital leaving the child behind. The abandonment was reported at Kenyatta Police Station vide OB No xxxx of April 9, 2019. No person came forward to claim the child and a final police letter was issued dated January 9, 2020 (Annexure No 18). Thereafter the Nairobi Children's Court committed the child to New Life Home Trust for care and protection. On April 16, 2021 the child was released into the custody of the applicants under a Foster Care Agreement.
12. Despite having abandoned her child immediately after birth, the Adoption Agency later managed to trace the child's biological mother at [Particulars withheld] Village in Ongata Rongai. The mother whose name was given as EK stated that the child was the result of an unwanted pregnancy and that the father of the child had disappeared when she became pregnant. The mother indicated her desire to give up the child for adoption stating that she lacked the means to care for the child.



13. Section 186(8) of the *Children Act* 2022 provides that –
- (8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—
- (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
 - (b) on the application of one of the spouses, the consent of the other spouse; and
 - (c) in the case of a child who has attained the age of ten years, the child himself or herself.
14. The child's biological mother swore an Affidavit of consent dated March 9, 2021 confirming that she wished to give up her child for adoption. The mother confirmed that together with her sister HNO she visited the Adoption Agency where both were taken through the explanatory Memorandum for Biological Parents/Guardians offering a child for adoption. Lastly, the mother in her Affidavit of consent confirmed that she voluntarily relinquished all rights over the child. On the basis of this Affidavit of consent, I find and hold that the consent of the biological parent of the child to this adoption has been obtained as required by Section 186(8)(a) of the *Children Act* 2022
15. 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)
16. The subject child has lived with the applicant in her home since April 2021. She has bonded with the applicant who she views as her mother. I was able to see the child online. She was a healthy neat child who though shy was comfortable sitting in the lap of the applicant. A home visit was conducted on June 3, 2022 by the Childrens Officer. The applicant resides in a one-roomed house in Maringo Estate. The house has adequate space and facilities to cater for the needs of a growing child. The applicant lives with her younger sister who helps her to care for the child. The report from the Director of Childrens Services was positive and recommended the adoption.
17. This is a child who was abandoned at birth. She 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.
18. I am satisfied that this adoption does serve the best interests of the child. Accordingly, I allow this application and make the following orders:-
1. The applicant VJM is authorized to adopt the child known as BABY EK
 2. Upon adoption the child will be known as BPJ.
 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. JMJ and WKP are appointed as the legal guardians the child.
 5. The Registrar General is directed to make the relevant entry in the Adopted Children's Register.



DATED IN NAIROBI THIS 22ND DAY OF SEPTEMBER 2022.

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MAUREEN A. ODERO

JUDGE

