



**In re BJNK (Baby) (Adoption Cause E004 of 2022)
[2022] KEHC 13378 (KLR) (Family) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13378 (KLR)

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

ADOPTION CAUSE E004 OF 2022

MA ODERO, J

SEPTEMBER 22, 2022

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY BJNK

IN THE MATTER OF

JKK 1ST APPLICANT

AWN 2ND APPLICANT

JUDGMENT

1. Before court is the originating summons dated January 19, 2022 by which the applicants seek the following orders:-

- “1. That the applicants be and are hereby authorized to adopt the child currently known as baby BJNK.
2. That if the adoption order is granted the said child is thereafter known as ANK.
3. That the child’s date of birth be declared to be September 20, 2019 and his place of birth to be declared to be Mama Lucy Kibaki Hospital, Nairobi County.
4. That the consent of the biological parents of the child be and is hereby dispensed since she was abandoned.
5. That HN and MN may be appointed the legal guardians of the child in the event of death of the applicants or incapacity of the applicants, rendering them un-available or incapable of taking care of the child.



6. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register.
 7. That the child be declared a Kenyan citizen.”
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 to each other in the year 2011. They solemnized their union in February 2013. The couple have not been blessed with any child. They now seek to adopt a girl child in order to complete their family.
 4. The applicants both confirmed that they understand the legal implications of an adoption order. They undertook to accord to the subject child all the rights due to a biological child including the right to inherit. They further state that their extended family are aware of and support the couples intention to adopt the child.

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 is believed to have been born on September 20, 2019. She is now aged approximately three (3) 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 the original copy of their certificate serial number xxxx dated July 21, 2021 declaring the child free for adoption. I therefore find that all 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 citizens of Kenya. They have annexed to the summons copies of their national identity cards (Annexures AWN 3(a) and AWN 3(b)).
9. The applicants are a married couple as evidenced by the annexed copy of their marriage certificate serial number xxxx (Annexure AWN '5') which indicates that the couple solemnized their union at the office of the registrar on February 27, 2013.
10. 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 April 21, 2021 written by Rev [particulars withheld] the Presiding Pastor of Kenya Assemblies of God [particulars withheld] Church (Annexure AWN '7').
11. The applicants are both gainfully employed. The 1st applicant is engaged in business and agricultural activities whilst the 2nd applicant is employed as a Principal Officer with [particulars withheld]. They have annexed copies of the 2nd applicants payslips as well as copies of bank statements for an account held at Kenya Commercial Bank. They earn a combined income of about Kshs 100,000, which is sufficient to provide for the needs of a growing child.



12. The applicants were both examined by a doctor and were found to be physically and mentally fit. They have annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations as proof that neither has a criminal record (Annexure AWN 6A and 6B).
13. The applicants told the court that their families support and approve of their intention to adopt the child. Indeed the applicants have appointed HN and MN the brother and sister of the 2nd applicant as legal guardians for the child. The said legal guardians have signed a consent dated January 19, 2022, indicating their willingness to act as legal guardians. All in all, I find that the applicants are suitable adoptive parents.
14. The subject child is believed to have been born on January 20, 2019. The child was found abandoned at the age of approximately three (3) months at [particulars withheld] estate in Nairobi. A good samaritan rescued the baby and reported the abandonment at [particulars withheld] Police Station *vide* OB Number xx of November 20, 2019. The Nairobi Children Court on June 10, 2020 committed the child to Christ Chapel Children’s Home for care and protection. On August 13, 2021 the child was placed into the custody of the applicants under a Foster Care Agreement.
15. 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.
16. The subject child was found abandoned at the age of only three (3) months within the Huruma area of Nairobi County in the Republic of Kenya. Efforts by police to trace the biological mother/relatives of the child have borne no fruit. The final police letter dated January 22, 2021 (Annexure AWN ‘8’) is proof of this. To date no person has come forward to claim the child. I therefore find that the child is a citizen of Kenya by birth and I so declare.
17. Given that the child was abandoned there exists no known person from whom consent for the 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.
18. 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)
19. The subject child was abandoned shortly after her birth. She faced an uncertain future living in childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a living and stable home environment.
20. The child has lived with the applicants in their home for a period of about one (1) year. No doubt the child has bonded with the applicants whom she views as her parents. I was able to see the child online. She was a healthy happy and boisterous toddler who was very comfortable in the company of the applicants.



21. A home visit was conducted by the Children's Officer on June 5, 2022. The applicants reside in their own home in Kitengela. The home is a four bedroomed house built on a half acre plot. The house was found to be spacious and served with piped water and electricity. It was spacious as well furnished and was a good environment for the child. I have perused the reports filed by the guardian ad litem the adoption agency and the Directorate Childrens Services. All three reports were positive and all recommend the adoption.
22. Finally, I am satisfied that this adoption serves the best interests of the child. Accordingly, I do allow the application and make the following orders:-
 1. The applicants JKK and AWN are authorized to adopt the child known as baby BJNK.
 2. Upon adoption the child will be known as ANK
 3. The child is declared to be a Kenyan citizen by birth and entitled to all the rights and benefits in respect thereto.
 4. HN and MN are appointed as the legal guardians of 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.

MAUREEN A. ODERO

JUDGE

