



**In re I aka IR (Child) (Adoption Cause E021 of 2022)
[2022] KEHC 13504 (KLR) (Family) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13504 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E021 OF 2022
MA ODERO, J
SEPTEMBER 22, 2022
IN THE MATTER OF THE CHILDREN’S ACT 2020
IN THE MATTER OF BABY ABANDONED BABY BOY AKA BABY I AKA IR (THE CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY DM AND JOO**

IN THE MATTER OF

**DM 1ST APPLICANT
JOO 2ND APPLICANT**

JUDGMENT

1. Before court is the originating summons dated 17th February 2022 by which the Applicants seek the following orders:-
 - “ 1. That DM of Kenyan National Identify Card Number xxxxxxxx and JOO of Kenyan National Identity card Number xxxxxxxx be authorized to adopt the child Abandoned Baby Boy aka Baby I aka IR, who is presumed to be born on the 1st April 2020.
 2. That upon adoption the child be known as AIOOC.
 3. That AAO – P of Kenyan Passport No. Cxxxxxx and FDAOO of Kenyan National Identity Card Number xxxxxxxx be appointed as the legal guardians of the child; Abandoned Baby Boy aka Baby I aka IR.



4. That the Registrar General be directed to enter this adoption into the Register of Adoption.

Which Application is supported by the statement of DM and JOO and on the following grounds as well as other and further grounds to be adduced at the hearing hereof:

1. That the Applicants have met the legal prerequisites set out for adopting a child and have sufficiently bonded with the child.
 2. That it is in the best interests of the child that the adoption order be granted in favour of the Applicants.”
2. The application was supported by the joint statement sworn by both Applicants. The application was canvassed by way or oral evidence on the virtual platform.
 3. The Applicants are a couple who got married to each other in the year 2014. They have no biological children but have a daughter who the couple adopted in 2019. They now seek to adopt a second child in order to expand their family.
 4. The Applicants both confirmed to the court that they understand the legal implications of an adoption order. They undertake to accord to the subject child all the rights dues 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 is believed to have been born on 1st April 2020. He is now about 2½ years old, which is above the six (6) week age limit provided for in law.
7. Kenya Childrens Home Adoption Society which is a registered Adoption Agency have annexed to their report an original copy of the Certificate Serial Number xxx dated 18th August 2021 declaring the Child Free For Adoption. Accordingly, I am satisfied that al the legal prerequisites for adoption 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. They have annexed to the summons copies of the National Identify Cards (Annexure DM-1)
9. The Applicant are both Christians and intend to raise the child in the Christian Faith. They have annexed to the summons a recommendation letter dated 4th October 2018 written by Rev. Father KSH of the Catholic Diocese of [Particulars withheld] (Page 44). Both Applicants were examined by a medical doctor and were found to be physically and mentally fit.
10. The Applicants are both in gainful employment. The 2nd Applicant works as a civil servant whilst the 2nd Applicant works a Business Manager with Marubeni Co-operation. The Applicants have annexed copies of their payslips as well as well of the 2nd Applicants Bank Statements for an account held at



Standard Chartered Bank (Annextrue DM '3'). Together the Applicants realize a monthly income of approximately Kshs 300,000 which is more than sufficient to provide for the needs of their growing children. I am satisfied that the Applicants are financially stable.

11. The Applicants have also annexed to the summons copies of clearance certificates issued to them by the Directorate of Criminal Investigations (Annexure 'DM-8') proving that neither have a criminal record.
12. 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 for the child, AAO – P and FDOO who are the sister and brother respectively of the 2nd Applicant. The two legal guardians have both signed consents dated 29th October 2018 indicating their willingness to act as legal guardians for the child (Pages 53 and 54 of the summons).
13. Based on the material presented before this court I am satisfied that the Applicants are suitable adoptive parents.
14. The subject child is believed to have been born on 1st April 2020. The child was abandoned in the Limuru Kihingo area on 3rd April 2020 aged only three (3) days old. The child was rescued and the abandonment was reported at the Tigoni Police Station vide OB Number xx of 3rd April 2020. The baby was then admitted at Tigoni Sub-County Hospital for medical attention. On 8th June 2020, the Limuru Childrens Court committed the child to Limuru Children's Centre for case and Protection. On 21st October 2021 the child was released into the custody of the Applicants under a Foster Care Agreement.
15. 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.
16. The subject child was abandoned aged only three (3) days old in the Limuru area of Kiambu County within the Republic of Kenya. Accordingly, I find that the child is a Citizen of Kenya by birth and I so declare.
17. From April 2020 no person has come forward to claim the child. Efforts by police to trace the biological mother and/or relatives of the child have not borne fruit. A final police letter dated 29th October 2020 (Annextrue 'DM-7') confirms this fact. Given the fact of his abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. Accordingly, I do waive the requirement for consent in line with Section 159(1)(a) of the *Children Act*.
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 soon after his birth. He faced an uncertain future living in Children's Homes and other similar institutions. This adoption allows the child an opportunity to be raised in a loving and stable home environment.
20. The child has lived with the Applicants in their home since October 2021. Undoubtedly, 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, happy and somewhat boisterous toddler. I have no doubt that the child is receiving excellent care. A home visit was conducted by the childrens officer. The couple reside with their Adopted daughter in a two bedroomed House in the Upper Hill Area of Nairobi County. The home was well furnished and found to be suitable environment for raising young children. The Applicants have engaged a Nanny to assist in the care of the children whilst they are away at work
21. It is important to note that the Applicants already have a child who they adopted in the year 2019. They are not new to parenting. They daughter is reportedly thriving under their care. All in all I am satisfied that this adoption does serve the best interests of the child. I do allow this application and I make the following orders:-
 1. DM and JOO are hereby authorized to adopt the child known as Abandoned Baby Boy aka BABY I aka IR.
 2. Upon adoption the child will be known as AIOO.
 3. The child is declared to be a citizen of Kenya 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. AAO – P and FOO 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

