



**In re JA aka BBA aka BB (Baby) (Adoption Cause E162 of 2021)
[2022] KEHC 13373 (KLR) (Family) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13373 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E162 OF 2021
MA ODERO, J
SEPTEMBER 22, 2022
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY JA AKA
BBA AKA BB**

IN THE MATTER OF

WJO 1ST APPLICANT

MKM 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated November 15, 2021 in which the applicants seek the following orders:-
 1. That the consent of the biological parents of Baby JA aka BBA be and is hereby dispensed with since the infant was abandoned by her biological mother.
 2. That the applicant be and is hereby authorized to adopt Baby JA aka BBA and the child be called BJW henceforth.
 3. That the Registrar-general do make appropriate entries in the adopted children's register in respect of Baby BJW.
 4. That BO be appointed the legal guardian of BJW.
 5. That the court does issue such orders as may be necessary in the best interest of the child.
 6. That the costs be in the cause".
2. The application was supported by the joint statement of the two applicants of even date. The summons was canvassed by way of oral evidence on the virtual platform.



3. The applicants WJO and MKM are a couple who have been married since the year 2010. The couple have no biological children of their own. However, the couple do have a daughter whom they adopted in the year 2014 and who is now aged nine (9) years. They now wish to adopt the subject boy-child in order to expand their family.
4. The applicants both confirmed that they do understand the legal implications of an adoption order. They undertake to accord to the subject child all the rights due to a biological child including the right of inheritance. The applicants also confirm that their extended family are aware of and support their intention to adopt the child.

Analysis and Determination

5. 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, court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (own emphasis)
6. The subject child is believed to have been born on June 4, 2020. He is now aged about two (2) years old, which is above the six (6) months age limit provided for in the law.
7. In the report filed by the adoption agency is an original copy of the certificate Serial Number xxx dated February 5, 2021 declaring the child free for adoption. This certificate was issued by Buckner Kenya Adoption Services, which is a registered adoption agency. I am therefore satisfied that the legal prerequisites for adoption have been met.
8. The duty of this court is to analyze the evidence on record in order to determine whether the applicants are suitable adoptive parents.
9. The applicants are both Kenyan citizens as evidenced by copies of their national identity cards, which are annexed to the summons (exhibits 10(a) and 10(b)). As stated earlier the applicants are a married couple. They have annexed to the summons a copy of their marriage certificate serial number xxxxx (exhibit 11). The couple have no biological children of their own but they do have a daughter aged nine (9) years old, who they previously adopted in the year 2014.
10. The applicants are both Christians who worship at [particulara withheld] in Athi River. They intend to raise the child in the Christian faith. The applicants have confirmed to the court that both their families are aware of and supported their intention to adopt the child. Indeed, they have appointed BO who is a sister to the 1st applicant as the legal guardian for the child. The said BO has signed an affidavit of consent dated November 18, 2021 indicating her willingness to act as legal guardian.
11. The applicants are both engaged in income earning activities. The 1st applicant is a Chief Executive Officer of his own company whilst the 2nd applicant is also self-employed running an Insurance Agency. They have both annexed copies of their bank statements with NCBA and Standard Chartered Bank (Exhibits 12 a). I am satisfied that the applicants are financially stable and earn sufficient income to enable them provide a comfortable living for their children.
12. The applicants were both examined by a doctor and found to be physically and mentally fit. They have both annexed copies of their certificates of good conduct issued by the Directorate of Criminal Investigation proving that neither has a criminal record (exhibits 12 (c)). All in all this court is satisfied that applicants are suitable adoptive parents for the child.



13. The subject child is a boy child who is presumed to have been born on June 4, 2020. The boy was abandoned shortly after birth and was found dumped in a farm in Athi River. The child was rescued and taken to Machakos Level 5 Hospital where he was admitted in an incubator. The abandonment was reported at Athi River Police Station *vide* OB Number 15 of June 5, 2020.
14. On June 12, 2020 the Machakos Children’s Court committed the child to Mahali Pa Maisha Children Home for care and protection. On February 27, 2021 the child was released into the custody of the applicants under a Foster Care Agreement.
15. Following the abandonment of the child efforts by police to trace the biological parent/relatives of the child have not borne any fruit. A final police letter dated 8th December 2020 is annexed to the summons.
16. Given that this child was abandoned by her biological mother there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I dispense with the requirement for consent in line with Section 159(1)(a) of the *Children’s Act*.
17. Article 14 of the *Constitution* of Kenya 2010 deals with issue 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.”
18. The subject child was abandoned shortly after birth in a farm at Athi River in the Republic of Kenya. He is premised in law to be a Kenyan Citizen by birth and so I do declare.
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, court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (own emphasis)
20. The child has lived with the Applicants in their home since February 2021. He has no doubt bonded with the Applicants. These are the only parents/family he knows. I was able to see the child online. He was comfortable seated on the lap of the 1st Applicant. The child appeared healthy but was too shy to respond when spoken to. A home visit was conducted by the Children’s Officer. The family live in a four (4) bed-roomed home in Athi River with two servants quarters attached. The house was noted to be spacious well furnished and provided a good environment in which to raise young children.
22. I have perused the reports prepared by the adoption agency, the guardian ad litem and the Director Children’s Services. All three reports were favourable and all recommended the adoption.
23. This is a child who was abandoned shortly after his birth. He faced an uncertain future living in children’s homes and other similar institutions. This adoption accords the child the opportunity to be raised in a stable and loving home environment.
24. All in all I find that this adoption serves the best interests of the child. Accordingly, I allow this application and make the following orders:-
 1. The applicants WJO and MKM are authorized to adopt the child known as BABY JA aka BBA.
 2. Upon adoption the child will be known as BJW.



3. The child is declared to be a Kenyan Citizen by birth and is entitled to all the rights and benefits in respect thereto.
4. BO is hereby appointed as the legal guardian for the child.

DATED IN NAIROBI THIS 22ND DAY OF SEPTEMBER 2022

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MAUREEN A. ODERO

JUDGE

