



REPUBLIC OF KENYA



KENYA LAW
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**In re of ADA (Minor) (Adoption Cause E027 of 2022)
[2022] KEHC 13376 (KLR) (Family) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13376 (KLR)

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

ADOPTION CAUSE E027 OF 2022

MA ODERO, J

SEPTEMBER 22, 2022

JUDGMENT

1. Before court is the originating summons dated 17th January 2022 by which the Applicants seek the following orders:-
 - “ 1. Spent
 2. Spent
 3. That the Applicants be authorized to adopt ADA, a child to be known as LCK”
2. The application was supported by the joint statement of even date made by both 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 2017. Their union has not yet been blessed with any child. They now seek to adopt the subject child in order to complete 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 child all the rights due to a biological child including the right to inherit. They state that their extended family are aware of and support their intention to adopt the child.

Analysis and Determination

5. I have carefully considered this application for adoption, the various Affidavits and Reports on record as well as the relevant law. I have also considered the evidence adduced in open court. The preliminary



requirements for the making of an Adoption Order 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.”

6. The subject child was born on 5th July 2020. He is now aged two (2) years old and is above the age limit provided for in law. Little Angels Network which is a registered adoption agency have annexed to their report a copy of their certificate Serial Number xxxx dated 30th March 2021 declaring the child Free For Adoption. Accordingly, I am satisfied that all the legal prerequisites for adoption have been met.
7. The duty of this court is to analyze the evidence presented before it to determine whether the applicants are suitable adoptive parents.
8. The Applicants are both Kenyan citizens. They have annexed to the summons copies of their National Identify Cards (Exhibit '3'). The Applicants are a married couple as evidenced by the copy of their Marriage Certificate Serial Number xxxx, which is annexed to the summons. Their union was solemnized at the Registrars office on 21st September 2017. They have no child of their own hence their desire to adopt the Subject child in order to complete their family.
9. The Applicants own their home in the Kileleshwa area of Nairobi County. They are both gainfully employed. The 2nd Applicant works as a Creative Director with Bean Interactive. He has annexed copies of his payslip (Exhibit '4'). The 1st Applicant is currently not in employment and is a full time mother to the child.
10. The Applicant have annexed to the summons copies of their Bank Statements from NCBA bank. They realize an income of approximately Kshs 150,000 a month. All in all I am satisfied that the Applicants are financially stable and are in a position to provide for the needs of a growing child.
11. The Applicants are both physically and mentally fit and are capable of parenting the child. They have annexed to the summons copies of clearance certificates issued to them by the Directorate of Criminal Investigations proving that neither has a criminal record.
12. The Applicants told the court that their respective families are aware of and support their intention to adopt the child. Indeed the couple have appointed MWN who is a sister to the 1st Applicant as the legal Guardian for the child. The said Milka Wanja has signed a consent dated 20th June 2022 indicating her willingness to act as legal Guardian for the child.
13. All in all based on the material presented to this court I am satisfied that the Applicants are suitable adoptive parents.
14. The Subject child was born on 5th July 2010 at the Mary Immaculate Medical Centre in Nairobi. The child was born to one ANW who was a single mother. The Childs biological mother informed the Adoption Agency that she conceived the child as a result of a sexual assault upon her by her then employer. The mother lost contact with the Childs father after the incident and his whereabouts are not known.
15. The Childs mother opted to give up the child for adoption as she did not have the means or capacity to care for him. She did not want to give the child to any of her relatives as they too were not able to provide for him. On 8th July 2020 (3 days after his birth) the biological mother approached Little Angels seeking to give up the child for adoption. The child was then admitted to New Life Home Trust



on 15th July 2020 and was later committed to the same home by the Nairobi Children’s Court vide Case No. E104 of 2021. On 17th June 2021 the child was released into the custody of the Applicants under a Foster Care Agreement.

16. Section 186(8) (a) of the *Children Act* 2022 provides as follows-

Subject to the provisions of section 186, 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)

17. The biological mother of the subject child approached the adoption agency three (3) days after delivering her son and expressed her desire to give up the child for adoption. The mother was counseled by the Adoption Agency. On 8th July 2020 she signed a Certificate acknowledging of having read and understood the Memorandum for Biological Parents. On 8th July 2020 the Childs biological mother signed the initial consent. Thereafter on 19th August 2020 the mother signed the Final Consent which consent was attested by Mr Emmanuel Mwangambo an Advocate of the High Court of Kenya. I am satisfied that the requisite consent was sought and obtained in line with Section 186(8) (a) of the *Children Act* 2001. Given that the child's biological Father has had no contact at all with the mother I waive any requirement for his consent in line with section 159 (1) (a) of the same 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 given up for adoption by his mother. The Applicants have taken him in and have provided him with a home. I was able to see the child online. He was a healthy, happy and somewhat boisterous little boy. The child has lived with the Applicants in their home since June 2021. This is the only family the child knows.

20. A home visit was conducted by the Childrens officer on 17th June 2022. The Applicants reside in a self-owned two bedroomed Apartments in Oysterville Apartments, Gatundu Close, off Nyeri Road. The house was spacious within a secure compound with 24 hour security and had a designated play area for children. The home is close to social amenities like schools, hospitals and shopping malls. It was found to be a conducive environment to raise a young child.

21. I have perused the reports prepared by the Guardian Ad Litem, the Adoption Agency and the Director Childrens Services. All three reports are positive and all recommend the adoption. This court is satisfied that the adoption serves the best interest of the child. Accordingly, I do allow this application and make the following orders.

- 1. The Applicants ENN and BOK are authorized to adopt the child known as ADA.
- 2. Upon adoption the child will be known as LCK.
- 3. The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.



4. MWN is 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

