



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Baby CW (Adoption Cause E073 of 2022)  
[2022] KEHC 15849 (KLR) (Family) (18 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15849 (KLR)

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

**FAMILY**

**ADOPTION CAUSE E073 OF 2022**

**MA ODERO, J**

**NOVEMBER 18, 2022**

**IN THE MATTER OF THE CHILDREN ACT (ACT 8 OF 2001)**

**AND**

**IN THE MATTER OF BABY CW**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION**

**IN THE MATTER OF**

**KCR ..... APPLICANT**

### **JUDGMENT**

1. Before this court is the Amended *ex parte* originating summons dated September 20, 2022 by which the Applicant seeks the following orders:-
  1. That the Applicant KCR be authorized to adopt the child currently identified as Baby CW.
  2. That henceforth the child be known as ACR.
  3. That the child be presumed to be Kenyan citizen by birth, and consequently, entitled to all the rights and benefits in respect thereof.
  4. That EKC and DCC be appointed as Legal Guardians of the child, in the event that the Applicant herein is incapacitated or in any way unable to discharge her parental obligations.
  5. That the guardian ad litem be discharged.
  6. That the Registrar General be directed to make the appropriate entries in the Adopted Children Register.



7. That the Court do issue such further orders as are in the interest of justice.”
2. The summons was supported by the written statement dated May 24, 2022 sworn by the Applicant. The matter was heard by way of viva voice evidence on the virtual platform.
3. The Applicant KR told the court that she is a single lady who has never been married and has no biological child of her own. The Applicant wishes to adopt a two (2) year old girl child in order to fulfil her desire to have a family and in order to provide a needy child with a home.
4. The Applicant confirmed that she understands 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**

5. I have considered this application, the Reports filed in court as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in Section 184(1) of the *Children Act, 2022* which provides –
  - “ 184(1) A person shall not commence any arrangements for the adoption of a child unless –
    - a. the council in accordance with the rules has declared the child free for Adoption.
    - b. the child has attained the age of six weeks.”
6. The subject child was born at the Kitale County and Referral Hospital on January 24, 2020. A copy of the Birth Notification Serial No xxxx is annexed to the summons (Annexure ‘KR 18’). Therefore, the subject child is now aged approximately 2½ years old and is above the six (6) week age limit provided for in law.
7. Buckner Kenya Adoption Services which is a registered Adoption Agency have annexed to their certificate Serial Number xxxx dated April 27, 2022 declaring the child Free of Adoption. Accordingly, I am satisfied 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 Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen. She has annexed to the summons a copy of her Birth Certificate Serial No xxxxxx (Annexure ‘KR4’) as well as a copy of her National Identity Card (Annexure ‘KR5’).
9. The Applicant has never been married and has no biological child of her own. She currently resides in Dubai where she works as a Project Manager with [particulars Withheld], Middle East. The Applicant has annexed a copy of her payslip (Annexure ‘KR8’) indicating that she earns a salary of approximately Kshs 800,000 monthly which is more than sufficient to enable her provide for the needs of the child. She has also annexed copies of Bank Statements for an account, which she holds with [particulars Withheld] Bank in Dubai (Annexure KR ‘9A’).
10. The Applicant owns a house/Apartment in Dubai and also owns property in Kenya. I am satisfied that the Applicant is financially secure.
11. The Applicant is a Christian and intends to raise the child in the Christian faith. She has annexed a letter of recommendation dated February 25, 2022 written by Pastor EK the Pastor in charge at [particulars Withheld] Church in Londiani, Kericho County. (Annexure ‘KR6A’). Also annexed is a certificate of Appreciation issued by the same Church to the Applicant (Annexure ‘KR6B’).



12. The Applicant was examined by a doctor and was found to be both physically and mentally fit. A copy of the medical report is Annexure 'KR10'. The Applicant has also annexed a copy of clearance certificate issued to her by the Director of Criminal Investigations (Annexure 'KR 11B') as well as a Police Clearance Certificate issued to her by the Dubai Police (Annexure 'KRA 11A'). This is proof that she has no criminal record.
13. The Applicant told the court her entire family support her intention to adopt. Indeed the child has been living with the Applicants mother whilst the Applicant returned to her job in Dubai.
14. The Applicant has appointed her cousin DCC and her husband EKC as the legal Guardians for the child. The two have both signed the Affidavit of consent dated September 14, 2022 indicating their willingness to be appointed as the legal guardians for the child. All in all I am satisfied that the Applicants is a suitable adoptive parent.
15. The subject child was born on January 24, 2020 at the Kitale County and Referral Hospital. The child's biological mother who gave her name as CW informed the hospital that she was unwilling to keep the baby because she was the result of an incestuous relationship and was therefore a 'taboo' child who would not be accepted in the family. She indicated her desire to give up the baby for adoption. However, the mother later abandoned the baby in the hospital and never returned to complete the adoption process.
16. The abandonment was reported at Kitale Police Station vide OB Number 41 of January 27, 2020. The baby was then taken to a rescue centre. Thereafter on February 11, 2020 the Kitale Children Court committed the baby to Mercy Rescue Centre for care and protection. On July 20, 2020 the child was placed into the custody of the Applicant under a Foster Care Agreement.
17. Following her abandonment the Childs biological mother never returned to the hospital to ask about her baby. Efforts by police, the adoption agency and social workers to trace the Childs mother have borne no fruit. A Final police letter dated July 27, 2020 is annexed to the summons (Annexure KR '26').
18. The subject child was born in Kitale Trans Nzoia County in the Republic of Kenya. Accordingly, I declare her to be a citizen of Kenya by birth.
19. Given the abandonment of the subject child by her biological mother and in view of the fact that all efforts to trace the said mother have failed, there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances I do waive the requirement for consent in line with section 187(a) of the [Children Act](#).
20. Section 8(1) of the [Children Act, 2022](#) provides as follows:-
  8.
    - (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
      - (a) the best interests of the child shall be the primary consideration;
      - (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.” (Own emphasis)
21. The subject child herein was abandoned at birth. To date no person has come forward to claim the child. She faced an uncertain future living in Childrens Homes. This adoption allows the child the opportunity to be raised in a stable and loving home environment.



22. The child has been living with the Applicant and her family since July 2020 a period of over two (2) years. I have no doubt the child has bonded with the Applicant. This is the only family the child knows. I was able to see the baby online. She was a beautiful healthy baby girl who was obviously receiving excellent care.
23. I have considered the reports prepared by the Adoption Agency, the Guardian Ad Litem, as well as the Director Childrens Services. All three reports were positive and all recommend the adoption.
24. A home visit revealed that the Applicant while in Kenya lives in a two bedroomed Apartment along Kindaruma Road, Nairobi. The Apartment is within a secure compound with 24 hour security. It is close to social amenities like shopping malls, schools and hospitals. The Applicant has also engaged a Nanny to help in caring for the baby.
25. Finally I am satisfied that this adoption will serve the best interests of the child. I therefore allow this application and make the following orders:-
  - (1) The Applicant KR is authorized to adopt the child known as baby CW.
  - (2) Upon adoption the child will be known as ACR.
  - (3) The child is declared to be a Kenyan citizen and is 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) EKC and DCC are appointed as the legal Guardians of the child.
  - (6) Not orders on costs.

**DATED IN NAIROBI THIS 18<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**MAUREEN A. ODERO**

**JUDGE**

