



**In re Baby OP (Adoption Cause E2 of 2020)  
[2021] KEHC 9780 (KLR) (28 April 2021) (Judgment)**

Neutral citation: [2021] KEHC 9780 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E2 OF 2020**

**JN ONYIEGO, J  
APRIL 28, 2021**

**IN THE MATTER OF ADOPTION OF BABY OP AKA AM AKA NMN**

**BETWEEN**

**SON ..... 1<sup>ST</sup> APPLICANT  
MMN ..... 2<sup>ND</sup> APPLICANT**

**AND**

**CHANGE TRUST ADOPTION SOCIETY ..... RESPONDENT**

**JUDGMENT**

- SON (hereinafter the 1<sup>st</sup> applicant) and MMN (hereinafter the 2<sup>nd</sup> applicant) are husband and wife respectively having married customarily the year 2010 and later formalized their marriage on 4<sup>th</sup> May, 2012 before the Registrar of marriage office Mombasa.
- They are Kenyan citizens by birth with the 1<sup>st</sup> applicant born on 1<sup>st</sup> January, 1972 and the second applicant on 6<sup>th</sup> July 1980. Despite their cohabitation since 2012, they have not been blessed with any biological child. However, the 1<sup>st</sup> applicant has a biological child by the name OCO alias CPO born out of the 1<sup>st</sup> applicant’s relationship with another lady now deceased. Due to medical complications, the 2<sup>nd</sup> applicant has been unable to conceive.
- Motivated by the desire to have more children, the applicants moved to this court seeking to adopt baby O P. *Vide* an Originating Summons dated 30<sup>th</sup> September, 2020, the applicants sought orders that; Baby OP aka AM alias NMN be declared as a Kenyan citizen; the consent to the adoption under Section 158 and 159 of the *Children Act* be dispensed with; they be authorized to adopt the baby herein; upon making the adoption order, the baby be known as NMN; upon making the adoption order ENO and DAO be appointed as legal guardians of the child; upon making the adoption order the Registrar General do make an entry recording the adoption and, the estimated date of birth of the child be 2<sup>nd</sup> August, 2018.



4. The application is supported by an affidavit jointly sworn on 30<sup>th</sup> September, 2020 by the applicants in which they averred that; they understand the consequences of adopting the baby and that, they have made up their mind voluntarily and without any influence or monetary consideration.
5. Regarding the child estimated to have been born on 2<sup>nd</sup> August, 2018, she was found having been abandoned at Meru municipality on 9<sup>th</sup> August, 2018. The child was taken to Meru Teaching and Referral Hospital on 9<sup>th</sup> August, 2018 for medical examination. The incident was reported at Meru police station *vide* OB No.15/17/10/XXXX. On 12<sup>th</sup> September, 2018 she was discharged and admitted at Neema House Infant Rescue Center for protection and care.
6. On 27<sup>th</sup> February, 2019, the minor was formally committed for care and protection at the same rescue center by the children court Meru *vide* P&A Case No. 11/2019. Despite every effort to trace the parents and or relatives, nobody came forward to claim the baby. Accordingly, Meru police station office wrote a letter dated 18<sup>th</sup> April, 2018 confirming that their effort to trace the baby's relatives was futile.
7. Six months having lapsed, the process of adoption commenced. Firstly, the child was declared free for adoption by Change Trust Adoption Society on 24<sup>th</sup> May, 2019 and a certificate S/No.0xxxx issued. Secondly, the child was placed under the care and control of the applicants on 8<sup>th</sup> June 2019 pursuant to Section 157 of the [Children Act](#).
8. Prior to the hearing, the Director Children Services filed his report dated 26<sup>th</sup> February, 2021 recommending the adoption. The guardian *Ad litem* also filed his report dated 18<sup>th</sup> January, 2012 also recommending the same. Change Trust adoption society filed its report dated 19<sup>th</sup> May, 2019 thus approving the adoption.
9. During the hearing, the applicants urged the court to grant their prayers. They confirmed that they had understood the consequences of adopting the baby and that it was permanent. They also acknowledged that they have an obligation to treat the child like their biological baby and that the process is not reversible.
10. I have considered the application herein, various witnesses' testimonies and the materials in support. Issues that the court is bound to determine are; whether the child is legally available for purposes of being adopted; whether the applicants are suitable to adopt the baby and, whether the adoption is in the best interest of the child.
11. The child was found having been abandoned within Meru Municipality. At the material time, she was estimated to be about one week old. The intention was in my view to expose the child to danger and possibly death. Despite every effort by the police and the Change Trust in tracing the parents or close relatives, none could be found as evidenced from the police letter dated 18<sup>th</sup> April, 2018. In the absence of any person claiming the baby, consent pursuant to Section 158 and 159 of the [Children Act](#) is dispensed with.
12. Concerning the issue of nationality, Article 14 (4) of the [Constitution](#) is available to cure the situation. Under this provision, any child found in Kenya while below the age of 8 years and whose parent/s or nationality is not known is presumed to be a Kenyan citizen by birth. In view of the circumstances under which the child was found abandoned while aged 7 days old, she is presumed to be a Kenya citizen.
13. Besides, under section 157 of the [Children Act](#), a child who is resident in Kenya whether born in Kenya or not is eligible for adoption. The child having been abandoned, declared free for adoption and placed



under the care and control of the applicants for a continuous period of 3 months is legally available for adoption.

14. Touching on the applicants' suitability, they have been described as financially stable. The first applicant is an employee of [particulars withheld] working as a logistician in Mombasa depot while the second applicant is working at [particulars withheld] Limited as a procurement officer. They have a combined monthly net income of about kshs 280,000. They are Kenyan citizens thus qualifying the adoption as a local adoption. In terms of age, they are between 25 years and 65 years being the age bracket for any potential adoptive parent pursuant to Section 158 of the Children Act.
15. On their social and moral aspect, they are Christians with no criminal record, loving and caring, mentally and physically fit. They have been staying with the child since 2019 hence have fully bonded with the baby. They understand and do appreciate the consequences of adoption and that it is permanent. I have no doubt they are suitable to adopt the baby.
16. Turning into the most critical consideration, the court is duty bound to ascertain whether the adoption is in the best interests of the minor as provided under Article 52(2) of the Constitution and Section 4 (2) of the Children Act.
17. The minor was found abandoned at a very tender age. She has since grown while in the good care of the applicants. She is assured of basic necessities like food, clothing, shelter, medical care and education. Further, the child is assured of a bright future under the care of loving parents. I have no doubt that she will benefit in terms of mentorship, parental care and guidance as well as something to inherit. In a nutshell, the adoption herein is in the best interests of the child.
18. Accordingly, the application is allowed with orders that;
  - (a) the applicants are hereby authorized to adopt baby OP who hereinafter shall be known as NMN.
  - (b) that the baby's date of birth shall be 2<sup>nd</sup> August, 2018 and place of birth Meru.
  - (c) that the consent of the child's biological parents and or guardian is dispensed with.
  - (d) the child is declared as a Kenyan citizen.
  - (e) the guardian Ad litem is discharged.
  - (f) that the Registrar General is directed to enter this adoption order in the adopted children's register.
  - (f) that ENO and DAO are hereby appointed as legal guardians to the baby in the event of any eventuality befalling the applicants.

**DATED, SIGNED DELIVERED VIRTUALLY AT MOMBASA THIS 28<sup>TH</sup> DAY OF APRIL, 2021.**

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**J. N. ONYIEGO**

**JUDGE**

