



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**(MILIMANI LAW COURTS)**  
**ADOPTION CASE NO. 127 OF 2018**  
**IN THE MATTER OF THE CHILDREN ACT**  
**AND**  
**IN THE MATTER OF THE ADOPTION OF AB Alias BABY A (A CHILD)**  
**BY**  
**FKN .....APPLICANT**

**JUDGEMENT**

1. By an Originating Summons dated 24<sup>th</sup> May, 2008, FKN (hereinafter the Applicant) moved this court pursuant to Sections 4 and 154 of the children's Act and Section 9 of the Kenya Citizenship and Immigration Act No. 12 of 2011 seeking orders:

1. That FKN be authorized to adopt the child AB alias baby A.
2. That the consent of the biological parents be dispensed with as the child was abandoned.
3. That upon making of the adoption orders, the child be known as AKM.
4. That the Registrar General do make the necessary entry of baby AKM in the adopted children's register.
5. That the child AKM be presumed to be a Kenyan citizen born in Kenya approximately on 24<sup>th</sup> July, 2011 and that the Director of Immigration Services to issue the child AKM with a Kenyan passport
6. That EM be appointed legal guardian of the child AKM.

2. The application is supported by an affidavit in support of an application for an adoption order plus supporting documents. The applicant herein is a single lady who has never been married. She is aged about 60 years now having been born sometime the year 1960. Unfortunately, she has not been lucky to have her own biological baby. However, she has successfully adopted a girl known FMN.

3. Professionally, she is a dress maker whose monthly earning is to the tune of Kshs 40,000/-out of her employment at [particulars withheld]. Her motivation to adopt the baby herein was propelled by the desire; to build her family; to have legitimate heirs to her property and also to have a sibling to her first adopted baby to complete a family with both gender.

5. Regarding baby A, he was abandoned along Ongata Rongai on 24<sup>th</sup> July, 2011. The matter was reported at Ongata Rongai Police Station vide OB. Vol. No. xx/xx/7/2011 by a good Samaritan who rescued the baby and thereafter referred to Wama Nursing home and later to Kenyatta National hospital on the same day for medical attention.

6. The child remained at Kenyatta National hospital till 29<sup>th</sup> August, 2011 when he was discharged to child welfare society of Kenya. The child was later committed to Hope House Babies Care for temporary care and protection pending formal committal. On 11<sup>th</sup> May, 2012, vide **Care and Protection Case No. 105/2012** Milimani Children's Court, the baby was formally committed to the same Institution for protection and care.

7. Despite every endeavor to trace his parents or close relatives, nobody came forward to lay claim over the baby. This is evidenced by the

police initial and final letters dated 24<sup>th</sup> July, 2011 and 1<sup>st</sup> May, 2012 respectively. The child welfare society further engaged in looking for the parents of the child but in vain.

8. Six months having lapsed from the date of abandonment, the process of adoption commenced. The child was declared free for adoption on 25<sup>th</sup> February, 2016 and a freeing certificate issued to that effect. He was then placed under the care and control of the applicant for a mandatory three month's continuous period.

9. Upon filing the adoption proceedings herein, the applicant sought the appointment of a guardian ad litem vide a chamber application dated 24<sup>th</sup> May, 2016. Consequently, BKM was appointed as guardian ad litem on 13<sup>th</sup> June, 2019 and the DCS directed to file assessment report.

10. Prior to the hearing of this application, the Director Children's Services, guardian ad litem and Kenya Welfare Society of Kenya filed their respective Evaluation and Assessment Reports dated 23<sup>rd</sup> September 2013, 4<sup>th</sup> October 2019 and 25<sup>th</sup> February, 2016 thus recommending the adoption.

11. During the hearing, the applicant urged the court to allow the application and grant her an opportunity to take care of the baby. She acknowledged that she understood the consequences of adoption and that it was permanent.

12. I have considered the application herein. The key issues for determination are:

**(i) Whether the child is available for adoption.**

**(ii) Whether the applicant is qualified to adopt the baby.**

**(iii) Whether the adoption is in the best interests of the baby.**

13. The baby herein was found abandoned at Ongata Rongai, at Kadisi Forest and rescued by a good samaritan who was by then collecting fire wood. Despite every effort by the Child Welfare Society of Kenya through the media and the police in tracing the parents or relatives of the baby, nobody came forward to claim the baby.

14. Under Article 14(4) of the Constitution, a child found in Kenya who 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. By dint of this provision and Section 157 of the Children's Act, the child herein is presumed to be a Kenyan citizen who is available for adoption.

15. The child was declared free for adoption and recommendations for adoption by all stake holders made. He is above six weeks and below 18 years thus fulfilling the age bracket for any child to be adopted. Accordingly, it is my finding that the child has met the requisite conditions for adoption.

16. Considering the suitability of the applicant to adopt, she is a Kenyan citizen aged below 65 years and above 25 years as the legal age requirement for any applicant to adopt a baby pursuant to Section 158 of the Children's Act. She has adopted another baby who is female hence the adoption of another baby who is a male is not a legal issue.

17. Touching on her economic and social status, she has been described by all stake holders as an economically stable person, a Christian with no criminal record, lovable, responsible and a caring parent. She owns various properties and has her own residential house.

18. She also understands the consequences of adoption and that it is permanent. During the hearing, she expressed her strong desire to adopt the child whom she and her extended family appreciates as one of the family members. The child has fully bonded with the family. Although irregularly placed before being declared free for adoption, it will amount to a travesty of justice to return the baby to the Children's Home with no hope of getting a home soon. I am satisfied that the applicant has met the necessary legal requirements to adopt the baby.

19. As regards whether the adoption is in the best interests of the baby, Article 53(2) of the Constitution and section 4(2) and (3) of the children's Act is critical. The two provisions do underpin the principle that in all decisions made affecting the welfare of a child in children matters; the best interests of a child must be considered.

20. The child was abandoned presumably by his mother who disappeared to thin air never to be found. The intention was to expose the child to either death or unfavourable conditions given that a forest is a place infested with all manner of wild animals.

21. The child has gotten a person ready to provide for him basic necessities

like food, shelter, education, clothing and medical care. He is assured of generational identity, psychological, moral, and mentorship support. Given the economic stability of the applicant, the child is assured of something for inheritance. In the circumstances therefore, consent from the parents pursuant Section 159 of the children's Act is not necessary.

22. Taking into account circumstances under which the child was found abandoned and considering that he is now safe and happy, the best interests of the child demands that the application be allowed with orders that:

**(a) The applicant is hereby authorized to adopt baby A who henceforth shall be known as AKM.**

- (b) That the child's date of birth is 24<sup>th</sup> July 2011 and place of **birth Ongata Rongai Kajiado County Kenya.**
- (c) The consent of his biological parents is dispensed with
- (d) That the child is considered to be a Kenyan.
- (e) That the guardian ad litem is discharged.
- (f) That the Registrar General is directed to enter the **adoption in the adopted children's register.**
- (g) That the Director Immigration is hereby directed to issue **the child with a Kenyan Passport.**
- (h) That the EM be and is hereby appointed as legal **guardian in the event of death or any eventuality befalling the Applicant.**

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF NOVEMBER, 2020.

J. N. ONYIEGO

JUDGE