



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Baby A (Adoption Cause 16 of 2014)
[2016] KEHC 6696 (KLR) (19 January 2016) (Judgment)**

In re Baby A [2016] eKLR

Neutral citation: [2016] KEHC 6696 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

ADOPTION CAUSE 16 OF 2014

EM MURIITHI, J

JANUARY 19, 2016

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY A

JUDGMENT

Introduction

1 By Originating Summons dated July 3, 2014 the applicant of Kenyan citizenship who are resident in Kenya seek an order that she be authorized to adopt Baby A; that the child’s name upon adoption be ANM; that a named legal Guardian be appointed for the child; and that the Registrar General be directed to make the appropriate entries in the Adopted Children’s Register, as provided for under section 170 of the *Children Act*.

Jurisdiction to make an adoption order

2 Under section 163 of the Children Act, the court before making an order of adoption is required to satisfy itself of certain matters as follows:

163.

- (1) The court before making an adoption order shall be satisfied—
 - (a) That every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;
 - (b) That the order if made will be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child, and to the ability of the applicant to maintain and educate the child;



- (c) that the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;
- (d) that any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;
- (e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of the child has expressed willingness to do so; and
- (f) that both the applicant and the child have been assessed and evaluated by a registered adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court.”

3 Finally, the court on making an adoption order has further power to appoint a guardian for the child as provided for under section 164 of the Children Act as follows

164. (1) The court at the time of making an adoption order may upon the application of the adopter, or of its own motion or in the case of applicants for an international adoption shall appoint any person approved by the adopter and whose prior consent thereto has been given in writing to be the guardian of the child in the event of the adopter, or both of the adopters where two spouses have applied for the adoption order, dying or becoming incapacitated before the child is of full age.

(2) The court may, at any time before the child is of full age, on the application of the adopter, or of the guardian appointed under subsection (1) or of the child, revoke such appointment and appoint any other person to be the guardian of the child.”

The Child

4 The Child named A is about three years (DOB about January 24, 2013) old African female child who abandoned and rescued in Eldoret Town according to Baharin police post, Eldoret records OB No.xxxx. He was initially placed on the same date under the care of Thomas Barnado House, Nairobi and subsequently by order of the Eldoret Children’s Court dated April 25, 2013 in Children Case No. xxxx. By a final letter dated September 9, 2013, the Baharini Police Post confirmed that the child has not been claimed since she was found abandoned. The child was declared free for adoption by the Kenya Children’s Home Adoption Society Case Committee on October 9, 2013. The child was placed with the applicants as foster parents on October 31, 2013.

The Prospective Parents

5 The applicant is Kenya citizen of Christian faith, aged 47 who works a saloonist/hairdresser at [particulars Withheld], Nairobi County who has reasonable income. She has a house on her family’s 4-acre piece of land in Mumbuni location of Machakos County. The applicants has appointed legal guardian, one JKL a sister to the applicant, who has consented to take care of the child in the event of death or incapacity of the applicant

Consents and Approvals

6 The consents of the biological mother and father are, in the circumstances of the abandonment of the child herein, waived under section 159 of the Children Act



Statutory Reports

- 7 *ad litem*, Ms. Redempta Ndinda Nzomo, the Kenya Children’s Home adoption society and the Sub-county Children Officer have filed reports on the proposed adoption, respectively dated November 30, 2015, January 5, 2015 and July 21, 2015, both which are positive in recommending the adoption to be in the best interest of the child..

Observations and findings of the court

- 8 The Court heard the testimony of the applicants, the guardian ad litem and a representative from the Kenya Children’s Home adoption society, Mr. Peter Ndotono, and Mr. Francis Njagi Kariuki Children Officer, Machakos, as well as observed the child in court and his relation with the applicants.
9. From its own observation, the Court agreed with the reports of the guardian, the adoption society and the Children Officer that the child had bonded well with the prospective parent. The court minuted its observation that “The child is well groomed and healthy. She is asleep and held by the prospective mother on her lap

Best Interests of the child

- 10 The child, who was abandoned by his parents shortly after birth, clearly, requires a home with loving and caring parents. Having found that the applicant, who have lived with the child for the past over two years, is suitable and able to provide for the needs of child, among others, loving care, a home, maintenance and education, and having considered the positive relevant statutory reports that the child has bonded with the applicant, the court determines that the best interest of the child must lie in the continued life as a member of the applicant’s family.
- 11 Accordingly, as urged by Counsel for the applicant, Mr.. Muya, the Court finds that it is in the best interests of the child, to allow the adoption so that he is provided with a family, a home and the loving care of the applicant, with whom she has clearly bonded

Orders

12. Accordingly, the final orders in Originating Summons dated 3rd July 2014, are granted as prayed.
13. The Orders of the Court will issue in the full names of the applicant, the child and the legal guardian.

DATED AND DELIVERED THIS 19TH DAY OF JANUARY 2016.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

Miss Mbuvi for the Applicants

Mr. Ndola- Court Assistant.

