



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Baby LAA (A Child) (Adoption Cause 53 of 2007)  
[2008] KEHC 508 (KLR) (Family) (12 March 2008) (Judgment)**

*In Re matter of Baby LAA (A Child) [2008] eKLR*

Neutral citation: [2008] KEHC 508 (KLR)

**REPUBLIC OF KENYA**

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

**FAMILY**

**ADOPTION CAUSE 53 OF 2007**

**BP KUBO, J**

**MARCH 12, 2008**

**IN THE MATTER OF BABY LAA (A CHILD)**

**Requirements for joint applicants to qualify as adoptive parents**

*The applicants filed the instant application seeking to be authorized to adopt a Kenyan baby aged two years. The applicants were German citizens and were married. The court highlighted requirements for joint applicants to qualify as adoptive parents. The requirements included: that the joint applicants, should have been married for at least three years prior to the date of commencement of adoption arrangements; and they or at least one of them should have attained the age of 25 years and be at least 21 years older than the child but should not have attained the age of 65 years.*

Reported by Kakai Toili

***Family Law** - adoption - adoption by foreigners - application for adoption by joint applicants - what were the requirements for joint applicants to qualify as adoptive parents - Children (Adoption) Regulations, 2005, regulation 19(d); , section 158(1)(a).*

**Brief facts**

The applicants filed the instant application seeking to be authorized to adopt a baby aged two years. The applicants were German citizens. They met in 1994 and started living together in 1995. They wedded in Scotland on August 29, 1996 and had remained married since (for over 20 years). The 1<sup>st</sup> applicant was aged around 47 years while the 2<sup>nd</sup> applicant was aged about 48 years. It had been estimated that the child to be adopted, a Kenyan girl, was born around February 2, 2006 and was aged about 2 years.

The 1<sup>st</sup> applicant was a biologist and a freelance journalist while the 2<sup>nd</sup> applicant was a journalist and had been working as a correspondent for a TV station in Kenya since September, 2002 when she and her husband the 1<sup>st</sup> applicant came to Kenya, their combined earnings worked out at Euros 6,000 per month (approximately Kshs 600,000 per month at an average exchange rate of Kshs 100 to the Euro). They owned a four bedroomed house in Germany which fetched Euros 500 per month which went into paying their mortgage for the house. They also had a medical insurance cover which included their children. The applicants expected to eventually



relocate to their home country, Germany. They had one biological child, a son aged about 11 years, who was reported to have taken the proposed adoption favourably.

### Issues

What were the requirements for joint applicants to qualify as adoptive parents?

### Held

1. Regulation 19 (d) of the Children (Adoption) Regulations, 2005 (Legal Notice No 43 of 2005) was to the effect that adopters, in the case of joint applicants, should have been married for at least three years prior to the date of commencement of adoption arrangements. That requirement had been met.
2. Section 158(1)(a) of the provided that for joint applicants to qualify as adoptive parents, they or at least one of them should have attained the age of 25 years and be at least 21 years older than the child but should not have attained the age of 65 years. Those statutory age requirements had been met.
3. The German Embassy in Nairobi had indicated that Kenyan adoptions were recognized in Germany. The child to be adopted was found by police officers along the roadside in Naromoru on April 8, 2006. She was taken to Nanyuki District Hospital and the matter reported to Naromoru Police Station. Later the child was committed to New Life Home Trust, Nairobi. The applicants took custody of the child on September 27, 2006 and had fostered her since. Nobody had claimed the child. Little Angels Network, a registered adoption society in Kenya, had declared the child free for adoption as required by law.
4. The child's guardian *ad litem* had recommended the proposed adoption. Kenya's Director of Children's Services had recorded that the applicants had received favourable assessment from relevant authorities in their home country. The Director had reported that the child to be adopted had bonded well with the applicants and also with the applicants' biological child. The Director had recommended the proposed adoption.
5. The applicants were persons of good means and had shown commitment to the welfare of the child to be adopted. The said child was abandoned and had never been claimed. The court dispensed with the child's biological parents' consent to the proposed adoption.
6. The applicants met Kenya's legal requirements for adoptive parents - that they were fit and proper persons to adopt the child and it was in the child's best interests to be adopted by the applicants.

*Application allowed.*

### Orders

- i. *The court made an international adoption order under section 162 of the, 2001 authorising the applicants to adopt the child.*
- ii. *The Registrar – General, Kenya was directed to make appropriate entries in the Adopted Children Register as required by law.*

### Citations

#### Statutes

1. Children Act, 2001 (Act No 8 of 2001) sections 154, 156(1); 157(1); 158(1)(a)(4)(a); 159(4)(6)(7)(8) (a); 160(1)(2)(4); 163, 164(1); 170 — Interpreted
2. Interpretation And General Provisions Act (cap 2) section 24 — Interpreted

#### Advocates

None mentioned

## JUDGMENT

1. By originating summons dated April 10, 2007 stated to be brought under sections 154; 156(1); 157(1); 158(1) (a), (4) (a); 159(4), (6), (7), (8) (a); 160(1), (2), (4); 163; 164(1) and 170 of the [Children Act](#), No



8 of 2001 plus section 24 of the [Interpretation and General Provisions Act](#), cap 2, HLO and BMV of Post Office Box number [particulars withheld], Nairobi, Kenya applied, *inter alia*, for the following substantive order, namely:-

2. That the applicants be authorized to adopt Baby LAA, to be known as LAAO.
3. At the hearing of the application, the applicants were represented by learned counsel, Mrs N Musyimi.
4. Salient facts pertaining to the application may be summarized as under.
5. The applicants are German citizens. They met in 1994 during a working tour to Australia and fell for each other. They started living together in 1995. They wedded at [particulars Withheld], Scotland on August 29, 1996 and have remained married since, i.e for over 20 years. Regulation 19 (d) of the Children (Adoption) Regulations, 2005 (legal notice No 43 of 2005) is to the effect that adopters, in the case of joint applicants, should have been married for at least three years prior to the date of commencement of adoption arrangements. This requirement has been met.
6. The 1<sup>st</sup> applicant, HLO was born on March 13, 1960 and is aged around 47 years. The 2<sup>nd</sup> applicant, BMV was born on April 17, 1959 and is aged about 48 years. It has been estimated that the child to be adopted, Baby LAA, a Kenyan girl, was born around February 2, 2006 and is aged about 2 years. Section 158 (1) (a) of the [Children Act](#) provides that for joint applicants to qualify as adoptive parents, they or at least one of them should have attained the age of 25 years and be at least 21 years older than the child but should not have attained the age of 65 years. These statutory age requirements have been met.
7. The 1<sup>st</sup> applicant is a biologist and a freelance journalist. He has been writing children's books. His earnings have been varying depending on clientele but have averaged Euros 2,000 per month. The 2<sup>nd</sup> applicant is a journalist and has been working as a correspondent for [particulars Withheld] in Kenya since September, 2002 when she and her husband the 1<sup>st</sup> applicant came to Kenya. The 2<sup>nd</sup> applicant has been earning a net salary of Euros 4,000 per month. The combined earnings of the applicants work out at Euros 6,000 per month, which translates to the equivalent of approximately Kshs 600,000/= per month at an average exchange rate of Kshs 100/= to the Euro. They own a 4 – bed roomed house in [particulars Withheld], Germany which fetches Euros 500 per month which goes into paying their mortgage for the house. They also have a medical insurance cover which includes their children. The applicants expect to eventually relocate to their home country, Germany.
8. The applicants have one biological child, a son aged about 11 years, who is reported to have taken the proposed adoption of LAA favourably. The applicants had previously considered having a second biological child in 2002 but apparently decided against it on account of the 2<sup>nd</sup> applicant's age.
9. The 2<sup>nd</sup> applicant gave oral evidence before this court and said she and the 1<sup>st</sup> applicant met the child to be adopted at New Life Home and immediately resonated with her. The applicants kept visiting the child and eventually decided to adopt her.
10. With regard to inheritance rights, the 2<sup>nd</sup> applicant testified that if the proposed adoption is authorized, LAA will have equal rights with their biological child or children.
11. The 2<sup>nd</sup> applicant's sister, AV has consented to be the subject child's legal guardian in the event of death or incapacity of the applicants before the child attains majority age and self-reliance.
12. The German Embassy in Nairobi has indicated that Kenyan adoptions are recognized in Germany.
13. The child to be adopted was found by police officers along the roadside in Naromoru on April 8, 2006. She was taken to Nanyuki District Hospital and the matter reported to Naromoru Police Station. Later



the child was committed to New Life Home Trust, Nairobi. The applicants took custody of the child on September 27, 2006 and have fostered her since. Nobody has claimed the child.

14. Little Angels Network, a registered adoption society in Kenya, has declared the child free for adoption as required by law.
15. The child's guardian *ad litem*, AAO has recommended the proposed adoption.
16. Kenya's Director of Children's Services has recorded that the applicants have received favourable assessment from relevant authorities in their home country. In particular the following documents have been issued:-
  - a) A certificate of adoption qualification by the Federal Central Office for Adoptions dated July 25, 2006 that Mrs BMV together with her husband possess the legal requirements to adopt a child according to German regulations.
  - b) A certificate of good conduct from the German Ministry of Justice.
17. Kenya's Director of Children's Services has reported that the child to be adopted has bonded well with the applicants and also with the applicants' biological child. The said director has recommended the proposed adoption.
18. The applicants are persons of good means and have shown commitment to the welfare of the child to be adopted. The 2<sup>nd</sup> applicant told this court she intends to take her maternity leave entitlement at partial pay of Euros 1,000 per month, ostensibly to concentrate on taking care of the child in her initial stages with them (applicants). Such leave is up to 3 years, which can be split on 50 – 50 basis between the applicants. The said child was abandoned and has never been claimed. I dispense with the child's biological parents' consent to the proposed adoption.
19. I am satisfied on evidence tendered before court that the applicants meet Kenya's legal requirements for adoptive parents, that they are fit and proper persons to adopt the child and that it is in the child's best interests to be adopted by the applicants. Accordingly, I hereby make an International Adoption Order under section 162 of the *Children Act*, 2001 authorising the applicants, HLO and BMV to adopt the child, Baby LAA who shall henceforth be known as LAAO.
20. The Registrar – General, Kenya is directed to make appropriate entries in the Adopted Children Register as required by law.

Orders accordingly.

**DELIVERED AT NAIROBI THIS 12TH DAY OF MARCH, 2008.**

**B.P. KUBO**

**JUDGE**

