



**In re Baby LH (Child) (Adoption Cause E003 of 2024)  
[2025] KEHC 4529 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4529 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
ADOPTION CAUSE E003 OF 2024  
FN MUCHEMI, J  
APRIL 3, 2025**

**BETWEEN**

**PHS ..... APPLICANT**

**AND**

**CHANGE TRUST ..... 1<sup>ST</sup> RESPONDENT**

**DYS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Originating Summons for determination dated 2<sup>nd</sup> May 2024 seeks for orders of adoption of Baby LH herein referred to as the child with a proposed name of ALH. The application further seeks for orders to direct the Registrar General to make an entry in the Adopted Children’s Register following granting of the adoption orders.

**The Applicant’s Case**

2. The applicant avers that the child is her niece and she was born on 12<sup>th</sup> June 2013 but was deserted and abandoned by her mother before her first birthday. The applicant states that she has brought up her niece as her own child while partly living with her mother but mostly living with her at her house in Kiambu County.
3. The applicant states that she is a procurement officer attached to the Ministry of interior and National Administration. She further states that she is single having been in a relationship previously which did not work as the parties expected.
4. The applicant avers that the child has been in her care and possession since 2013 when she was abandoned/deserted by her mother. The applicant further avers that the child’s father is her brother but he was unable to take care of the child since he was a student in secondary school when the child



- was conceived. The applicant states that her brother, the 2<sup>nd</sup> respondent has consented to her adopting the child since he has not been able to support the child or be present for the child.
5. The applicant states that Change Trust has no objection to the instant application. She further states that Change Trust visited her home, interviewed the applicant and concluded that the child is free for adoption.
  6. The applicant states that she is financially capable of taking care of the child and that she is emotionally and physically fit to take up the child for adoption. She further avers that she is a person of good conduct and has never been charged or convicted of any criminal offences referred to in the third schedule of the *Children's Act*.
  7. The applicant states that LHS, the mother of the child has consented to be the guardian of the child in the event that she dies before the child attains the age of maturity. Further, YBK has consented to be the guardian ad litem of the child.
  8. The applicant states that she has not received or agreed to receive any payment or reward in consideration for the adoption.

#### **Issue for determination**

9. The main issue for determination is whether the applicant has satisfied the legal requirements under the Children's Act to be granted orders for adoption of the child.

#### **The Law**

10. The preliminary requirements for the making of an adoption order are set out in Section 184(1) of the *Children's Act* which provides as follows:-

No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free or adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.
11. Thus for an adoption order to ensue the following ought to be taken into consideration:-
  - a. A child must be at least six (6) weeks old and free for adoption;
  - b. The child concerned must have been in the continuous care and control of the applicant within Kenya for a period of three (3) consecutive months preceding the filing of the application; and
  - c. Both the child and the applicant have been evaluated and assessed by a registered adoption society in Kenya.
12. In the instant adoption cause, the child is a niece of the applicant whose biological father is her younger brother. The minor has lived with the applicant since the year 2013 when the minor's mother deserted and abandoned the child. In my view, this is a kinship or family adoption. A kinship adoption is a domestic adoption and the requirements for kinship adoption are well set out in Part XIV of the *Children's Act* as follows:-
  - a. The applicant is above twenty five years of age and below sixty five years of age;
  - b. The applicant is a relative of the child;
  - c. The child has been declared free for adoption;



- d. That all the reports and evaluations conducted indicate that it is in the best interests of the child that the applicant adopts the child as demonstrated by the fact that they are family, and that the applicant has been educating and providing for the child since birth
  - e. The child has given her consent to being adopted by the applicant;
  - f. The biological parents have given their consent.
13. In deciding upon any matter involving a child court are obliged to give priority to the best interests of the child pursuant to Article 53 of the Constitution. The minor has been declared free for adoption by Change Trust vide certificate serial number 00xxx. The said adoption agency carried out an interview and home visit of the applicant and has recommended that the applicant is suitable and eligible to adopt the minor who is free for adoption. The adoption agency has supported their findings by filing their report to Declare a Child free for Adoption dated 1<sup>st</sup> March 2024 and Social Inquiry and Home Study Report dated 15<sup>th</sup> March 2024. Furthermore, the Department of Children's Services, Kiambu made a social inquiry report and in its report dated 13<sup>th</sup> December 2024 requested by the court recommended the applicant suitable for adoption of the minor.
  14. The biological father of the minor one DYS has given his consent for the applicant to adopt the minor. Furthermore, the child who is eleven years old gave her consent to be adopted by the applicant. The minor's mother's whereabouts are unknown as she deserted and abandoned the minor before her first birthday and have not contacted the applicant since then.
  15. Similarly, the Guardian *ad litem* has recommended adoption of the child by the applicant as being in the best interests of the child. This is the person who has been given legal standing to make statements on behalf of the child. The reports show that the applicant has taken care of the minor since the year 2013; that the applicant has the financial capability to take care of the child; that her home environment is safe secure and satisfactory; that the child relates well with the applicant; that the applicant does not have any criminal record of having been charged or convicted of any criminal offences referred to in the third schedule of the Children's Act and that the applicant has not received or agreed to receive any reward in consideration for the adoption.
  16. As such, the applicant has complied with all the requirements of the law for purposes of adoption and that it is in the best interests of the child that the applicant be permitted to adopt the child.
  17. Accordingly, the Originating Summons dated 2<sup>nd</sup> May 2024 is allowed in the following terms.
    - a. That the Applicant PHS is hereby authorized to adopt the child herein Loyce Hambaka.
    - b. That the child will be known as ALH.
    - c. That LHS is hereby appointed as the legal guardian of the child.
    - d. That the Registrar General shall make the appropriate entry of this adoption in the Adopted Children's Register.
    - e. That there shall be no order as to costs.
  18. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3<sup>RD</sup> DAY OF APRIL 2025.**

**F. MUCHEMI**



**JUDGE**

