



REPUBLIC OF KENYA



In re Baby N (Adoption Cause E05 of 2023) [2024] KEHC 2094 (KLR) (5 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2094 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E05 OF 2023
RN NYAKUNDI, J
MARCH 5, 2024**

RULING

1. The applicant B J B filed an originating summons on 14th June 2023 seeking the following orders:
1. That B J B of Kenya National Identity Card Number 1333XXXXXX who is a Kenyan Citizen, be authorized to adopt the child, Baby N born on the 25th day of May 2021.
2. That upon adoption, the child be known as T C and be declared to be a Kenyan Citizen entitled to all the rights and benefits under the *constitution* of Kenya and all applicable laws.
3. That KKR and PJ of Kenya National Identity Number 2233XXXX and 2597XXXX respectively be appointed as legal guardian's *ad litem* of Baby N pending hearing and determination of this application.
4. That the registrar general is directed to enter this adoption into the register of adoption and subsequent birth certificate do issue by registrar of Birth and Deaths which application is based on the following grounds and a sworn affidavit of B J B.

The grounds in support of the originating summons

- a. That the applicant is desirous of adopting baby N who was an abandoned baby.
- b. That baby N was rescued by a Good Samaritan having been abandoned in a vegetable farm near Langas police station on the 25th Day of May, 2021.
- c. That Baby N was taken was taken to Langas police station the good Samaritan who issued occurrence book number 39/29/5/2021.
- d. That baby N was thereafter taken to Moi Teaching and Referral Hospital where the baby was admitted at the New Born Unit (NBU) for further management as police continued with the investigations.
- e. That baby N was discharged from the Moi Teaching and Referral Hospital on 9th July 2021 to be taken care of at the Holy Family Children's Home Kimumu, Eldoret as the children's department sought formal authorization from the Magistrate Court in Eldoret.



- f. That the Magistrate court having been satisfied baby N was in need of care and protection, vide order dated 15th February 2022 authorized Holy Family Children’s Home to have custody of Baby N.
 - g. That the little Angels Network a registered adoption agency in issued certificate Number 002257 declaring baby N free for adoption.
 - h. That the applicant approached the Little Angels Network in 2022 as Prospective Adoptive Mother.
 - i. That the Little Angels Network Case Committee sitting on 4th August 2021 considered the applicant herein had met all the legal and social parameters for adoption.
 - j. That the applicant herein has undergone the post application procedures leading up to this application including a pre-placement report, guardian’s letter of consent, health reports and a police clearance certificate.
 - k. That the applicant is able and willing to give Baby N a stable loving home environment.
2. The applicant as deduced from the record is a single lady aged 48 years with no marriage union history but brought up in a family of four siblings domiciled at Aldai Constituency. She is employed and works at Moi Teaching and Referral Hospital which caters for her financial support. During the period under review and by the time of filing this originating summons the applicant had already established her home with full facilities required to accommodate Baby N. In addition, the applicant undertakes other business to supplement income from formal employment. The director of Children services filed a home based inquiry report dated 30th November, 2023 in support of an adoption order. The adoption agency Little Angels Network issued a certificate dated 6th of April 2022 declaring the minor free for adoption. The accompanying report dated the same day was also placed before the court recommending the applicant as suitable to take care of the minor within the dictate of the Constitution and children’s Act.

The Decision

3. The guiding provisions of the law are to be found in Section 183 (4), 184, 185, 187, 188 & 189 of the Children’s Act. Much of what is stated in the applicant’s application and as supported by the report from the director of children services dated 30th November, 2023 and Little Angels Network and adoption agency dated 6th April 2022 are in compliance with the statutory provisions in section 183(4), 184, 185, 186, 187 & 188 of the Act. It is on record that baby N was abandoned at a very tender age and her parents remain unknown as at the time of this proceedings. They cannot be found and therefore incapable of giving their consent. The minor was then entrusted in institutional care before the applicant agreed to begin fostering her awaiting formal adoption orders. All this must be considered within the context of the best interest of the minor with due regard to the child wishes and having regard to her age and understanding.
4. The court in *JVC* (1970) AC 668 observed as follows;

“when all relevant facts, relationships, claims and wishes of parents, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interest of the child”
5. The letter and spirit of the children’s Act on this matter encompasses the following guidelines in determining any question on the best interest of the child with particular emphasis:



- a. The ascertainable wishes and feelings of the child concerned in light of his or her age and understanding.
 - b. The child's physical, emotional and educational needs.
 - c. The likely effect in any changes in the child's circumstances.
 - d. The child age sex background and any circumstances relevant in the matter.
 - e. Where relevant, the capacity of the child's parents, guardians or others involved in the care of the child in meeting his or her needs.
6. In respect of Art. 53 (2) of the constitution the right of the best interests is further strengthened, it is not simply to be a primary consideration but the paramount consideration. Indeed, the best interests of the child are to be the determining factor when taking a decision on adoption, but also on other issues.
 7. The best interests of the child, is also a condition under the children act of Kenya and specific conditions are set out and characterized as principles and rules in case of adoption.
 8. The empirical evidence in this case consists a full length affidavit by the applicant, the report from the director of children's services as corroborated with a status report from Little Angels Network adoption agency referred to elsewhere in this ruling persuades me to exercise discretion to grant the following orders as prayed for in the originating summons: -
 1. That BJB of Kenya National Identity Card Number 1333XXXXXX who is a Kenyan Citizen, be authorized to adopt the child. Baby N born on the 25th day of May 2021.
 2. That upon adoption, the child be known as Talia Chebet and be declared to be a Kenyan Citizen entitled to all the rights and benefits under the constitution of Kenya and all applicable laws.
 3. That KKR and PJ of Kenya National Identity Number 2233XXXXX and 2597XXXXX respectively be appointed as legal guardian's ad litem of Baby N pending hearing and determination of this application.
 4. That the registrar general is directed to enter this adoption into the register of adoption and subsequent birth certificate do issue by registrar of Birth and Deaths which application is based on the following grounds and a sworn affidavit of BJB.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 5TH DAY OF MARCH 2024

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R. NYAKUNDI

JUDGE

borotlaw@gmail.com

