



**In re JAA (Minor) (Adoption Cause E001 of 2024)
[2024] KEHC 6855 (KLR) (12 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 6855 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E001 OF 2024**

**G MUTAI, J
APRIL 12, 2024**

BETWEEN

OAHO 1ST APPLICANT

FAE 2ND APPLICANT

AND

THE CHANGE TRUST RESPONDENT

JUDGMENT

Introduction

1. JAA, the subject of these proceedings, was born on XXX 2006. His biological parents are ZAO and A A. The father of the minor, AA, died on 13th May 2017.
2. The Applicants are a married couple. The 1st Applicant, OAHO, is the uncle of the minor, being the brother of ZAO. The joint applicants got married on 22nd January 2017 in Toronto, Canada. They have 2 biological children of their own, AH, aged 5 and Aisha Haji, aged 4. They work as civil Engineering Technologist and Early Childhood Educator respectively.
3. Vide Originating Summons dated 22nd January 2024 the joint applicants sought the following orders: -
 1. That OAHO & FAE be authorized to adopt JAA the minor child;
 2. That the minor child, JAA, is a Kenya citizen;
 3. That the minor child's name be retained as JAA;
 4. That the Registrar General be directed to enter the name of the child in the adopted child register in the prescribed form and to issue a certificate to that effect.
 5. That ZAO be appointed as Legal Guardian;



6. That the Honourable Court be pleased to make any other orders it deems fit and appropriate; and
7. That costs of this Summons be costs in the cause.
4. The first Applicant is a Kenyan citizen. He was born in Mombasa and holds dual Kenyan citizenship. The second Applicant is a Canadian Citizen. If the application is successful, the applicants propose to raise the minor as a Muslim until he attains the age of majority, at which point he will be free to choose his own faith.
5. The Joint Applicants have proposed the biological mother of the subject minor as his legal guardian so that she can take care of him in the event they are unavailable due to death or other forms of permanent incapacity.
6. The Joint Applicants annexed to the application the child's birth certificate, his father's death certificate, the certificate to declare a child free for adoption, the report to declare the child free for adoption, the social inquiry report, as well as other supporting documents whose contents I have noted.
7. The Originating Summons was filed together with the chamber summons dated 22nd January 2024, vide which the Joint Applicants sought, inter alia, to have a guardian ad litem appointed and also to have the Children Officer, Mvita Sub-county conduct investigations into the suitability of the Joint Applicants to adopt JAA and to submit their respective reports.
8. The said chamber Summons were heard on 21st February 2024. Upon being convinced that QAAC was suitable, I appointed him as a guardian ad litem and directed him to file his report within 30 days. I also directed the Children, Officer, Mvita Sub-county to do the same thing within a similar timeline. Hearing of the Originating Summons was slated for 20th March 2024 at 3 p.m.

Evidence Adduced in Court

9. The matter was heard on 20th March 2024. On the said date, 6 witnesses testified. The Court also interviewed the minor and obtained his opinion on the matter.
10. The 1st Witness was Ephraim Muteru Njama. Mr Njama is the Managing Trustee of Change Trust, an adoption society. He testified that they evaluated the Joint Applicants and also declared the child as being free for adoption. He recommended the adoption.
11. The second Witness was Njeri Mwangi. Ms Mwangi works for the Directorate of Children's Services, Mombasa County. She testified that they conducted a home visit on 14th March 2024 and prepared a report dated 15th March 2024, which was filed on 20th March 2024. Upon conducting an online social enquiry, as the Joint Applicants are based in Canada, they found that the Joint Applicant's home environment is adequate. Although it was noted that this is both a kinship and foreign adoption, the said Children Officer, relying on case law, recommended the adoption.
12. The third Witness was QAAC. QAAC is the court-appointed guardian ad litem. He lives in Tudor. He, too, prepared a report. His report is dated 19th March 2024. In the said report, he recommended the adoption.
13. The fourth Witness was ZAO. Zena is the minor's only surviving parent. She testified that the first Applicant was her younger brother. She also testified that she is aware that adoption is permanent and that she freely gave her son up for adoption.
14. The first Applicant was the fifth Witness. He testified that he works in Toronto as an Engineering Technologist. He wishes to adopt the minor to give him a better life and also to support the minor's



mother, who is also his sister. He is aware that the adoption makes the minor legally his son. He prayed that the adoption application be allowed.

15. The second Applicant, Fatma Abdulrahman El- Busaidy, was the 5th Witness. She is an early childhood educator based in Toronto. She stated that the minor had been a constant presence in their lives. She too prayed that the adoption application be allowed.
16. The Court interviewed Jamil Abdulrahman. He stated that he is a student at Sheikh Khalifa Bin Zayyid School. Jamil testified that he is aware of the adoption process and agreed to it.

Analysis and Determination

17. I have seen the pleadings, the supporting documents, the report of the Directorate of Children Services, and the report of the guardian ad litem. I have also heard the testimonies of the witnesses. The issues that call for my determination are whether the minor is available for adoption, whether the Joint Applicants are fit to adopt him, and, most importantly, whether the adoption is in the best interest of the child.
18. This is a kinship adoption. The 1st Applicant is the maternal uncle of the minor. The minor's father is deceased, while his father is deceased.
19. Regarding the child's nationality, it is clear that he is of Kenyan nationality.
20. In terms of age, the minor is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive child pursuant to Section 184 (b) of the *Children Act*, 2022. Further, Section 185(1) states that any child who is a resident of Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt the child is fit for adoption.
21. Concerning the Joint Applicants' suitability, the 1st Applicant is a Kenyan citizen aged 33 years, which places her under the age bracket of not less than 25 years nor more than 65 years for an adoptive parent in compliance with Section 186(2) of the *Children Act*, 2022. Although the 2nd Applicant is a Canadian citizen aged 32 years, old, she appears to have bonded well with the minor. The Joint Applicants have been described as financially stable. They have no criminal record. The minor has fully bonded with them. She understands the consequences of adoption and knows that once an adoption order is made, it is permanent.
22. Consequently, I have no doubt that the Joint Applicants meet the necessary requirements to adopt the minor. I am guided by the case of *In re B (Baby)* [2018] eKLR, where the court stated:-

“I am of the considered view that weighing all factors and the evidence placed before me, the applicants are of sufficient ability to bring up the child and to furnish her with appropriate support and maintenance within their resource base available to them.”
23. On the question of whether the adoption is in the best interests of the baby, I am guided by Article 53(2) of *the Constitution* of Kenya, 2010 and Section 8(1) and (2) of the *Children Act* 2022 which underscores the best interests of a child as the primary consideration before making any decision concerning a child.
24. Further, the court in the case of *In re MA (Baby)* [2021] eKLR stated: -

“This court, in the case of *In re B (Baby)* [2018] eKLR, held that the purpose of Kenya's Constitution and Children's Act is to protect and promote the welfare of Children by



providing them with stable family units. The fundamental concern, therefore, in every adoption cause is the best interest of that very child.”

25. As stated earlier, the minor’s father died. His mother, the proposed legal guardian has since remarried. In the circumstances, he needs basic necessities like food, shelter, education and clothing, which the Joint Applicants have stepped in to provide. From the evidence adduced, he has fully integrated with Joint Applicants. It is obviously in the child's best interests that this adoption application is allowed. I am guided by the case of *In re IK (Child)* [2020] eKLR, where the court stated: -

“She needs parental care to grow up as a normal child with emotional and physical protection, which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and well-being of the child. As *the Constitution* and the law state, in all matters concerning a child, the child's best interests are paramount.”

Disposition

26. Based on the foregoing, I find and hold that the adoption application has merits. Consequently, I issue the following orders: -

1. JAA (Minor) is hereby declared a Kenyan citizen by birth;
2. The Consent of the biological father of JAA (Minor) is hereby dispensed with;
3. The Joint Applicants OAHO and FAE are hereby authorised to adopt JAA (Minor);
4. JAA (Minor) shall retain his name, JAA;
5. ZAO is hereby appointed as the Legal Guardian of JAA (Minor) and entrusted with the responsibility of taking care of him in the event that the Joint Applicants becomes deceased or are otherwise permanently unable to take care of him before he attains the age of majority;
6. The Registrar General is directed to enter the name of JAA (Minor) in the Adopted Child Register in the prescribed form and to issue a certificate to that effect; and
7. The guardian-ad-litem, QAAC, is hereby discharged.

27. Orders accordingly.

DATED AND SIGNED THIS 12TH DAY OF APRIL 2024 AT MOMBASA.

GREGORY MUTAI

JUDGE

In the presence of: -

Ms. Mwashushe for the Joint Applicants; and

Arthur - Court Assistant.

