



**In re KK (Minor) (Adoption Cause E051 of 2024)
[2024] KEHC 8019 (KLR) (Family) (4 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8019 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E051 OF 2024
H NAMISI, J
JULY 4, 2024**

IN THE MATTER OF

BNK 1ST APPLICANT

EKN 2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 22nd February 2024, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
 - i. That the Applicants, B.N.K. AND E.K.N., be allowed to adopt the child currently identified as Baby K.K;
 - ii. That henceforth, the child be renamed as C.D.N;
 - iii. That the child’s date and place of birth be declared to be 12th September 2020 in Nairobi County;
 - iv. That the child be presumed to be a Kenyan citizen by birth, and consequently be entitled to all the rights and benefits in respect thereof, including being issued with a post-adoption Certificate of Birth and a Passport;
 - v. That MBK and ANM be appointed as Legal Guardians for the child, in the event that the Applicants herein are incapacitated or in any way unable to discharge their parental obligations before the child attains the age of majority;
 - vi. That the guardian ad Litem be discharged;
 - vii. That the Registrar-General be directed to make the appropriate entries in the Adopted Children’s Register;



- viii. That this Court do issue such further orders as are in the interest of justice
2. The matter was canvassed by way of viva voce evidence on the virtual platform on 20th June 2024.

The Child

3. The child (male) was born on 12th September 2020. He is currently 3 years old. The child was found abandoned about 1 year after birth in a house within Bahati Estate. The matter was reported to the Police vide OB16/15/9/2021. The child was committed to Happy Life Children's Home by the Nairobi Children's Court on 20th May 2022. (Annexure BK25)
4. The child was declared free for adoption by the Buckner Kenya Adoption Services, a registered Adoption Agency, vide the annexed Certificate serial number xxxx. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.

The Applicants

5. The Applicants are husband and wife. They got married on 8th April 2004. They adopted their first child, JSN, in 2017. The Applicants now seek to adopt the subject child in order to complete their family. They both confirmed that they fully understand the implications of an adoption order and undertake to accord the child all the rights and privileges due to a biological child.
6. I have considered the Summons, the evidence on record as well as the various reports filed.
7. The duty of this Court is to analyse the material before it to determine whether the Applicants are suitable adoptive parents. The Applicants are both citizens of Kenya as evidenced by the copies of the National Identity Cards annexed to the Summons (Annexure BK 4A and 4B).
8. The Applicants are committed Christians and intend to raise the child in the Christian faith. They worship at Full Gospel Churches of Kenya. The Applicants have annexed their medical reports, indicating that both are in good health.
9. The 1st Applicant is an engineer, while the 2nd Applicant is a Senior Clinical Research Associate and Project Manager. They have annexed bank statements and copies of title deeds to their application as proof of financial stability.
10. The Applicants have annexed copies of their clearance certificates from the Kenya Police Service as proof that neither of them has a criminal record.
11. The Applicants have appointed MBK and ANM, the 1st Applicant's sister and brother-in-law as legal guardians. The said legal guardians have both signed a consent dated 15th May 2023 indicating their willingness to step in and care for the child in the event the Applicants are unable to provide for the child.
12. The Applicants informed the court that their first adoptive child is very fond of the subject child and the two have formed a strong bond. They also informed the court that the larger family is supportive of their intention to adopt. From the material availed, I am satisfied that the Applicants are suitable adoptive parents.



Analysis and Determination

13. Article 14 (4) of *The Constitution* provides as follows:

A child found in Kenya who is, or appears to be, less than 8 years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.

14. The child was found abandoned within the Republic of Kenya aged only 1 year. I, therefore, declare that the child is a citizen of Kenya by birth.

15. The child was abandoned and all efforts by the police to trace the child's parents/relatives have borne no fruit. The final letter dated 15th September 2021 from Jogoo Road Police Station (Annexure BK-21) indicates that efforts to trace the parents have been futile. In the circumstances, there exists no known person from whom consent for this adoption can be sought and/or obtained. I, therefore, waive this requirement in line with section 185 (4)(b) of the *Children Act*, Cap 141 of the Laws of Kenya.

16. In deciding any matter involving a child, the court is obligated to give priority to the best interest of the child. Section 8 of the *Children Act* provides:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies –
 - a. The best interests of the child shall be the primary consideration;
 - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule;
2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this *Act* or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-
 - a. Safeguard and promote the rights and welfare of the child;
 - b. Conserve and promote the welfare of the child; and
 - c. Secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.

17. This child who was abandoned a year after birth faced an uncertain future in the children's homes and other similar institutions. This adoption, therefore, allows the child the opportunity to be raised in a stable and loving home environment.

18. I have considered the Reports filed by the Adoption Agency, the Guardian Ad Litem, the Director of Children Services, all of which were positive and recommended the adoption. I was able to see the child online. He is happy, healthy and cheerful, and was able to answer basic questions about himself. He was very comfortable sitting between the Applicants.

19. It is therefore my view that the adoption does serve the best interests of the child.

20. Accordingly, I allow the Summons and make the following orders:

- i. The Applicants, B.N.K. AND E.K.N., are allowed to adopt the child currently identified as Baby K.K;
- ii. Upon adoption, the child shall be renamed as C.D.N;



- iii. The child is declared to be a Kenyan citizen by birth, entitled to all the rights and privileges under *the Constitution* of Kenya and all applicable laws;
- iv. The child is declared to have been born on 12th September 2020 in Nairobi County;
- v. MBK and ANM are appointed as Legal Guardians for the child,
- vi. The guardian ad Litem is hereby discharged;
- vii. The Registrar-General is directed to make the appropriate entries in the Adopted Children's Register;

DATED AND DELIVERED AT NAIROBI THIS 4 DAY OF JULY 2024

HELENE R. NAMISI

JUDGE

Delivered on a virtual platform in the presence of
....Ms. Kimenyi.....for the Applicant
Applicants present

