



REPUBLIC OF KENYA



In re Adoption Order in Respect of CJ aka AC (Minor) by JWW (Applicant) (Adoption Cause E095 of 2024) [2024] KEHC 10572 (KLR) (Family) (2 July 2024) (Judgment)

Neutral citation: [2024] KEHC 10572 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E095 OF 2024
CJ KENDAGOR, J
JULY 2, 2024
IN THE MATTER OF AN APPLICATION FOR AN ADOPTION
ORDER IN RESPECT OF CJ AKA AC (MINOR) BY JWW (APPLICANT)

JUDGMENT

1. The Applicant JWW is the sole applicant seeking authorization to adopt Baby CJ, aka AC, hereinafter referred to as the child. Upon adoption, the child is to be known as ZWW. JWW will be appointed as the child's legal guardian upon granting the adoption orders. The Originating Summons application is dated 4th April, 2024 and was filed in Court on 17th April, 2024.
2. The Applicant is a Kenyan citizen, as evidenced by a copy of her Kenyan National Identity Card. JWW is employed as an IT Manager and her financial capability and ability to provide for the child is evidenced by her bank statement and payslips. The applicant's health status is good, as evidenced by her medical reports dated 18th September 2021, and she does not have any previous criminal records, as evidenced by her Certificate of Good Conduct issued by the Directorate of Criminal Investigations. She has indicated her desire to adopt the child and to allow her to grow in a family setup. The applicant desires to adopt baby CJ, aka AC, as a baby sister to baby BT, adopted through Adoption Cause No. 67 of 2019.
3. The report from the Ministry of Labour and Social Protection State Department for Social Protection and Senior Citizen Affairs—Directorate of Children's Services (Nairobi County), dated 30th May, 2024, provides a detailed background of the child.
4. The report indicates that the child is a girl, presumed to be aged 1 year and 4 months. She was abandoned at National Oil Kisumu on 29th January, 2023, and no parent or relative has turned up to claim her to date, and she is consequently in need of care and protection. The child was declared free for adoption on 27th October, 2023 by Buckner Kenya Adoption Services (BKAS) vide freeing Certificate Serial Number 0705.



5. The child is a Kenyan citizen by virtue of Article 14 (1), which provides that a person is a citizen by birth if, on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.
6. In light of the best interests of the child principle provided for under Article 53 (2) of *the Constitution* of Kenya, 2010, Sections 8 (1), (2), and (3) of the Children's *Act No. 29 of 2022*, and the 1st Schedule of the Children's *Act No. 29 of 2022*, this Court must prioritize the child's best interests in making decisions affecting her.
 - a. Article 53 of *the Constitution*, 2010 states that a child's best interests are of paramount importance in every matter concerning the child.
 - b. Sections 8 (1), (2) and (3) of the Children's *Act No. 29 of 2022* provides as follows;
 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 public interest.
 3. In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.
 - c. The First Schedule as provided for under Section 8 (1) of the Children's *Act No. 29 of 2022* provides best interests considerations to be as follows:-
 1. The age, maturity, stage of development, gender, background and any other relevant characteristics of the child.
 2. Distinct special needs (if any) arising from chronic ailment or disability.
 3. The relationship of the child with the child's parent (s) and/ or guardian (s) and any other persons who may significantly affect the child's welfare.
 4. The preference of the child, if old enough to express a meaningful preference.
 5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.
 6. The stability of any proposed living arrangements for the child.



7. The motivation of the parties involved and their capacities to give the child love, affection and guidance.
 8. The child's adjustment to the child's present home, school and community.
 9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/ or guardian (s), including physical access.
 10. The capacity of each parent and/ or guardian (s) to cooperate or to learn to cooperate in child care.
 11. Methods for assisting parental and/ or guardian cooperation and resolving disputes and each parent's/ guardian's willingness to use those methods.
 12. The effect of the child if one parent/ guardian has sole authority over the child's upbringing.
 13. The existence of domestic abuse between the parents/ guardian (s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
 14. The existence of any history of child abuse by a parent and/ or guardian (s); or anyone residing in the same dwelling as the child.
 15. Where the child is under one year of age, whether the child is being breast - fed.
 16. The existence of a parent's (s) or guardian's (s) conviction for a sex offense or a sexually violent offense under the *Sexual Offences Act*.
 17. Where there is a person residing with a parent or guardian, whether that person; -
 - a. Has been convicted of a crime under this Act, the *Sexual Offences Act*, the Penal Code or any other legislation.
 - b. Has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
 18. Any other factor which may have a direct or indirect effect on the physical and psychological well -being of the child.
7. The report from the Ministry of Labour and Social Protection State Department for Social Protection and Senior Citizen Affairs – Department of Children's Services (Nairobi County), the report from Buckner Kenya Adoption Services (BKAS) Adoption Society, the guardian ad litem and the proposed legal guardians indicate that the child is well known to the adoptive parent and that she will be well taken care of in her care and custody.
 8. The child was placed in the applicant's care on 20th December, 2023 and has settled well in her surroundings. The guardian ad litem confirmed that the child has bonded with the appellant's other adoptive child. The prospective legal guardians have agreed to step in in case anything happens to the applicant that makes it impossible for her to discharge her parental obligation.
 9. This adoption will be in the best interest of the child, who will benefit from belonging to a family unit that loves and cares for her.



10. In the circumstances, I allow the originating summons dated 4th April, 2024 and make the following orders:
- a. The Applicant JWW is authorized to adopt the child known as CJ, aka AC
 - b. Upon adoption, the child shall be known as ZWW.
 - c. The child is declared a Kenyan citizen by birth and is entitled to all rights and benefits under *the Constitution* of Kenya, 2010, and all applicable laws.
 - d. MKW AND EMM are appointed as legal guardians of the child.
 - e. The Registrar General is directed to make the relevant entries in the Adopted Children's Register for the child.
 - f. The Registrar of Births and Deaths is directed to issue a birth certificate with the child's new name.

It is so ordered.

DATED and DELIVERED at NAIROBI through the Microsoft Teams Online Platform on the 2ND day of JULY, 2024.

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Hellen

