



**In re AT alias PFK (The Child) (Adoption Cause E007 of 2022)  
[2024] KEHC 11018 (KLR) (20 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11018 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
ADOPTION CAUSE E007 OF 2022**

**MA ODERO, J  
SEPTEMBER 20, 2024**

**IN THE MATTER OF**

**EKJ ..... 1<sup>ST</sup> APPLICANT  
LMM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this court is the Originating Summons dated 9<sup>th</sup> June 2022 by which the Applicants EKJ and LMM seek the following orders;-
  1. Spent
  2. That the applicants EKJ And LMM be authorized to adopt baby AT alias PFK.
  3. That the Honourable Court do dispense with the mother’s consent who absconded abandoning the child after delivery at the Kandara, Kiambu County.
2. The Summons was supported by an Affidavit of even date sworn by the 1<sup>st</sup> Applicant.
3. The Applicants are a couple who got married to each other in the year 2005. To date they have not been blessed with a child. The couple now wish to adopt the subject child in order to complete their family.
4. The Applicants both confirmed that they understand the legal implications of an adoption order. They undertook to accord to the subject child all rights that are due to a biological child including the right to inherit.

**Analysis and Determination**

5. I have considered this application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.



6. The Prerequisites for adoption are set out in Section 184 (1) (a) and (b) of the Childrens Act 2022 as follows:-
  - “(1) A person shall not commence any arrangement for the adoption of a child unless:-
    - a. The council, in accordance with the rules, has declared the child free for adoption.
    - b. The child has attained the age of six weeks.”
7. The subject child is a girl child who is believed to have been born on or about 18<sup>th</sup> September 2019. The child is therefore now aged five (5) years old and is above the six (6) week age limit provided for by law.
8. Buckner Kenya Adoption Services, which is a registered adoption agency have annexed to their report a copy of their certificate serial No. 0507 dated 13<sup>th</sup> November 2020 (Annexure EKJ ‘8’) declaring the child Free for Adoption. Therefore I am satisfied that the legal prerequisites for adoption have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicants are suitable adoptive parents. The applicants are both Kenya Citizens who resides in Nyeri County in the Republic of Kenya. A copy of their National Identity Cards are annexed to this application.
10. The Applicants are a couple who got married to each other on 9<sup>th</sup> April 2005. A copy of their Marriage Certificate Serial Number 01XXX9 appears as Annexure ‘EKJ’1’ to the Summons.
11. The couple have not borne a child of their own hence their desire to adopt a child. They are both Christians and intend to raise the child in the Christian Faith.
12. The 1<sup>st</sup> Applicant is a Pastor and works with the Deliverance church whilst the 2<sup>nd</sup> Applicant runs a business in Nyeri Town. They have annexed copies of their financial records (Annexure EK ‘7’) which indicate that they earn sufficient income to provide for the needs of the child.
13. The Applicants have also annexed copy of clearance certificate issued to each of them by the Directorate of Criminal Investigations confirming that neither has a criminal record (see EKJ 6(a) and EKJ 6(b)).
14. The Applicants told the court that their extended family are all aware of and support their intention to adopt the subject child.
15. They have appointed one AWG to be the legal Guardian for the child. The said legal guardian has signed an Affidavit dated 17<sup>th</sup> August 2024 confirming her willingness to take responsibility for the child in the event that the Applicants are unable to do so or are unavailable.
16. Based on the material before this court I am satisfied that the Applicants are suitable adoptive parents.
17. The subject child is believed to have been born on 18<sup>th</sup> September 2019. The child was abandoned aged only two (2) months at the roadside in Kandara. A Good Samaritan rescued the baby and took her to Kandara level 4 Hospital where she was admitted for evaluation.
18. The abandonment was reported at Kandara Police Station vide OB NO 27 of 18<sup>th</sup> November 2019. On 11<sup>th</sup> December 2019, the Nairobi Children’s Court committed the child to New Life Home Trust for care and protection. On 25<sup>th</sup> November 2020, the child was released in the custody of the Applicants under a Foster Care Agreement.



19. Article 14(4) of *the Constitution* of Kenya 2010 provides that:-

“(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by Birth.”

20. The subject child was found abandoned at the age of two (2) months within Nyeri County in the Republic of Kenya. Efforts by police to trace the biological mother and/or relatives of the child have born no fruit. To date no person has come forward to claim the child. A final police letter dated 28<sup>th</sup> October 2020 confirms this fact. I therefore declare the child to be a citizen of Kenya by birth.

21. Given the fact of her abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I do waive the requirement for consent in line with Section 187 (1) (a) *Children Act* 2022.

22. In deciding upon any matter involving a child, courts are obliged to give priority to the ‘best interests’ of the said child. Section 8 (1) of the *Children Act* 2022 provides that:-

“(8) 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 priority consideration” [Own emphasis]

23. This is a child who was abandoned a few months after her birth. She faced an uncertain future living in Children’s Home. This adoption allows the child the opportunity to be raised in a stable and loving home environment.

24. The child has lived with the Applicants for close to four (4) years. She views them as her parents and theirs is the only home the child knows. I was able to see the child online. She was a healthy, though somewhat shy young girl.

26. A Home visit was conducted by the Children’s Department on 5<sup>th</sup> June 2024. The Applicants live in a residence along the Othaya - Mukurweini Road in a three bed-roomed rental house. The House was found to be fitted with all necessary amenities in a secure compound suitable for raising a young child.

27. I have considered the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Childrens Department. All three reports were favourable and all recommended the adoption.

28. Finally I find that this adoption does serve the best interest of the subject child. Accordingly I allow this application and make the following orders:-

1. The Applicants EKJ and LMM are authorized to adopt the child known as Baby AT.
2. Upon adoption the child will be known as PFK.
3. The child is declared to be a Kenyan Citizen by birth and is entitled to all the rights and privileges pursuant thereto.
4. Ann Wairimu Gichuki is appointed as the legal Guardians of the child.
5. The Registrar - General is directed to make relevant entry in the Adopted Children’s Register.
6. No orders on costs.



DATED IN NYERI THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2024.

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MAUREEN A. ODERO

JUDGE

