



REPUBLIC OF KENYA



**In re Adoption of Baby AK (Minor) (Adoption Cause E215 of 2023)
[2024] KEHC 15476 (KLR) (Family) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 15476 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E215 OF 2023
EKO OGOLA, J
SEPTEMBER 19, 2024
IN THE MATTER OF THE CHILDREN'S ACT, 2022
AND
IN THE MATTER OF THE ADOPTION OF BABY AK (MINOR)
AND
IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION BY MA

JUDGMENT**

1. The Originating Summons before this court is dated 11th June 2023 by which the applicant prays for the following orders: -
 - a. That the applicant MA be and is hereby authorized to adopt AK and the child's name shall remain AKW
 - b. That AWM be and is hereby appointed as legal guardian of the child in the event a misfortune befalls the applicant rendering her unavailable or incapable of taking care of the child.
 - c. That the child was born in Kenya of Kenyan parents and is therefore Kenyan by birth and is entitled to a Kenyan passport.
2. The Originating Summons was supported by the statement of even date sworn jointly by the applicants and an affidavit in support of the application. The matter was canvassed by way of viva voce evidence in court.
3. PW1 was the applicant. She testified that she is divorced with one biological daughter. PW1 is gainfully employed and capable of taking care of the child.



4. PW2 was AM, the proposed legal guardian. PW3 was CO, an officer from the Directorate of Children's Services. PW4 was CWK the appointed guardian *ad litem*. They testified that they had visited the applicant and the child and they recommended the adoption.
5. PW6 was FCS, the child's biological mother. She testified that she has four other children and is not able to take care of them. She testified that she had not been coerced to give up the child for adoption.
6. PW6 was the child. He deposed that he is 15 years old and agrees to the adoption.
7. Change Trust Adoption Agency filed a report supporting the adoption application.

Determination

8. I have carefully considered this adoption application, the various affidavits and reports on record, and the relevant law. I have also considered the evidence adduced in open court.
9. This is an application for Kinship adoption. The applicant is the child's aunt. The applicant and the child's biological brother were siblings. The child's biological father passed away on 1st July 2013. The applicant has been the child's caregiver since the child was of tender age. The child's mother has financial constraints and that is the reason for the adoption. The child was declared free for adoption on 20th January 2023 by the Change Trust Adoption Society under Certificate Serial No 00546.
10. A kinship adoption is a domestic adoption. In [Adoption Cause 75/2017](#), J.N.A. by Zoo and C.A.N. the Court held that:-

“According to the guidelines for alternative Family Care of Children in Kenya pg.153, kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child. Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoption. This is therefore considered to be a local adoption.”
11. Further to this, the requirements for kinship adoption are well set out in Part XIV of the [Children's Act](#). From the Court's record, the applicant has been able to fulfil the conditions stipulated.
12. Furthermore, the applicant is engaged in gainful employment and can financially provide for the child. The Applicant is also in good health with the potential to provide a good social life for the child. In addition, the extended family is in support of this adoption application.
13. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. Section 8 (1)(a) of the [Children Act](#) 2022 provides:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.”
14. The applicant has been the sole caregiver of the child. Furthermore, the child will still maintain his relationship with his mother and extended family. Therefore, I am satisfied that the adoption will serve the best interest of the child. Accordingly, I allow this adoption application and make the following orders: -
 - a. The Applicant is authorized to adopt the child known as Baby AK.
 - b. Upon adoption, the child will be known as AKW.



- c. The Registrar General is directed to make appropriate entries in the Adopted Children's Register.
- d. The Directorate of Immigration Services is hereby directed to issue the child a Kenyan passport.
- e. AWM is appointed as the legal guardian of the child.
- f. The guardian *ad litem* is hereby discharged.

Orders accordingly

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2024

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E.K. OGOLA

JUDGE

In the presence of:

Mr. Amuyunzu for the Applicant

Ms Gisiele M court Assistant

