



REPUBLIC OF KENYA



KENYA LAW
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**In re LA alias LAP (Minor) (Adoption Cause E184 of 2023)
[2024] KEHC 15414 (KLR) (Family) (17 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 15414 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E184 OF 2023
EKO OGOLA, J
SEPTEMBER 17, 2024
IN THE MATTER OF THE CHILDREN'S ACT, 2022
AND
IN THE MATTER OF THE ADOPTION OF BABY LA ALIAS LAP (MINOR)
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY SMK
JUDGMENT**

1. The Originating Summons before this court is dated 21st September 2023 by which the applicants pray for the following orders: -
 - a. Pursuant to Article 14(4) of *the Constitution* of Kenya, 2010 and Section 11 of the *Children Act*, 2022, this honourable Court be pleased to declare the child LA alias LAP a Kenyan citizen by birth.
 - b. Pursuant to the provisions of Section 187 of the Children's Act 2022, this Honorable Court be pleased to dispense with the requirements of consent to adoption as required by the provisions of Section 186 (8)(a), (b), and (c) of the Children's Act 2022.
 - c. The Applicant SMK be authorized to adopt LA alias LAP- a child.
 - d. Upon the making of the adoption order, the child be known as LAP
 - e. Upon the making of the adoption, INK be appointed guardian of the child as provided for by the provisions of S. 195 of the Children's Act 2022.



- f. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of the child as 28th April 2016 in the Adoption Children Register as provided for by S. 200 of the Children’s Act 2022.
 - g. The costs of this application be costs in the cause.
2. The Originating Summons was supported by the statement of even date sworn jointly by the applicant and an affidavit in support of the application. The matter was canvassed by way of viva voce evidence in court.
 3. PW 1 was the applicant. She testified that she is single and does not have any biological children. PW1 testified that she is a teacher by profession and financially capable of taking care of the child. She added that she has been with the child since 22nd December 2022.
 4. PW2 was FWJ, the guardian ad litem. PW3 was INK the proposed legal guardian. PW4 was LMA a social worker from the Change Trust Adoption Agency. PW5 was NO an officer from the Directorate of Children’s Services. They all testified in support of the adoption application.

Determination

5. 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.
6. The preliminary requirements for the making of an Adoption Order are set out in Section 184(1) of the Children’s Act 2022 which provides as follows:

“ 184 (1) A person shall not commence any arrangement for the adoption of a child for the adoption of a child unless the council, in accordance with the rules, has declared the child free for adoption and the child has attained the age of six (6) weeks old.”
7. The child was born on 28th April 2016. She was left in a house by her parents for several days without attendance in Kabiria, Mutego area within Dagoretti Sub-County. She was rescued by a good Samaritan and the matter was reported to Mutuini Police post vide OB No. 10/2/5/2017. The child was placed at Angel Centre for Abandoned Children. On 9th April 2021, the child was committed to the said home under P&C No. E153 of 2021. A letter from Riruta Police Station dated 21st April 2021 stated that no one has claimed the child. On 11th November 2022, the child was declared free for adoption by Change Trust under Certificate No. 00605.
8. From the foregoing, the legal prerequisites for an adoption order have accordingly been met.
9. The duty of this Court is to analyze the material placed before it and decide as to whether the applicants are suitable adoptive parents. The Applicant is a Kenyan citizen and is financially stable. Hence, in a good position to provide for the child’s needs. The applicant was also examined and found to be physically and mentally fit. Furthermore, there is a Certificate of Good Conduct issued by the Kenya Police Service which proves that the applicant has no criminal antecedents. From the foregoing, I am satisfied that the applicant is a suitable adoptive parent.
10. Article 14 of *the Constitution* deals with the issue of Citizenship. Article 14(4) provides as follows:

“ (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.”



11. From the aforementioned provision, the child is a Kenyan citizen by birth.
12. 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.”
13. The child has lived with the applicants from 2022. There is no doubt that the child sees the applicant as her mother. The various reports filed in court all recommend the adoption. Therefore, I am satisfied that the adoption will serve the best interests 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 LA alias LAP.
 - b. Upon adoption, the child shall be known as LAP.
 - c. The Registrar General is directed to make appropriate entries in the Adopted Children's Register.
 - d. INK is appointed as the legal guardian of the child.
 - e. The guardian ad litem is hereby discharged.

Orders accordingly

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF SEPTEMBER 2024

E.K. OGOLA

JUDGE

In the presence of:

Ms. Kinoti for the Applicant

Ms Gisiele M court Assistant

