



**In re Baby AN (Adoption Cause E011 of 2024)  
[2024] KEHC 16731 (KLR) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 16731 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**ADOPTION CAUSE E011 OF 2024**

**BM MUSYOKI, J**

**OCTOBER 17, 2024**

**IN THE MATTER OF BABY AN**

**IN THE MATTER OF**

**SWM ..... APPLICANT**

**JUDGMENT**

1. This matter was heard on 4-07-2024 and reserved for judgement on 12-08-2024 but I was unable to deliver the judgment. I adjourned the same to 16-08-2024 and again to 26-09-2024. The reasons for deferring the judgement which was 80% complete was because the evidence taken from the applicant and Ezekiel Kimani an Assistant Director of Children Services had material areas of concerns for which I sought to have clarifications.
2. On the part of the applicant, she had stated in her evidence before me that she had another child named I whereas her filed witness statement and the supporting affidavit indicated that she did not have a child. The applicant had also not filed the social inquiry report from the adoption society on her suitability to adopt. On the part of the Directorate of Children Services, its report had indicated that the certificate freeing the child for adoption was serial number 8XXXXX dated 25-11-2020 whereas the copy filed in court was serial number 8XXXXX2 dated 30-11-2020.
3. In view of the above, I on 26-09-2024 gave directions that the applicant and the Assistant Director of Children Services should appear before me on 2-10-2024 to clarify on the above issues. On 2-10-2024, I took further evidence of the applicant and Mr. Ezekiel Kimani an Assistant Director of Children Services who made the clarifications oath. The clarifications are incorporated in the evidence of the witnesses reproduced in this judgement.
4. The applicant herein is a citizen of the republic of Kenya who states that she is single having ended a previous marriage. She also holds citizenship of United States of America by virtue of which she holds passport number 490XXXX739. She is not able to get children for reasons beyond her control and has now approached this court with originating summons dated 11-01-2024 seeking the following orders;



1. She be allowed to adopt Baby AN and that the baby be renamed OSM and the registrar general be ordered to enter this adoption in the register of adoptions; and
2. RAWM be appointed as the legal guardian of the child who shall be presumed to have been born in Kenya.
5. The applicant grew desire to have more children and on 26-1-2018 approached KKPI Adoption Society seeking to adopt a child. The applicant told the court that she was approved as an adoptive parent by the said society but in the first instance, she did not produce a report which forced this court to defer judgment as indicated above. When she was recalled on 2-10-2024, she produced report dated 6-10-2024 from KKPI Adoption Society which was positive. The report recommended that the applicant be allowed to adopt the minor.
6. Jacqueline Wangui Mwangi, a representative of KKPI Adoption Society appeared in court on 18-07-2024 and produced a certificate declaring the child free for adoption dated 30-11-2022 bearing serial number 8XXXXX2. The applicant was placed with the child on 10<sup>th</sup> January 2023 by Mogra Soul Winner Rescue Centre where the child had been admitted. She told the court that the society made follow ups after the placement and confirmed that the child had adapted well with the applicant. She recommended that the adoption orders prayed for in this application be allowed.
7. The applicant testified before me on 4-07-2024. She informed the court that she had enough resources to take care of the child herein as her own. She also confirmed that she was aware that once the adoption order is issued, the same is irreversible. She also understood that once the orders are issued, the child herein will attain all the rights of a child including inheriting her and with that knowledge, she was desirous of proceeding with this application. She relied on her affidavit and statement dated 11-01-2024. She also said on oath that she had another daughter known as I although the same information was not reflected in her statement and supporting affidavit which stated that she had no other child.
8. When recalled on 2-10-2024 as indicated above, the applicant testified that as at the time she filed the witness statement and the supporting affidavit in this matter, she did not have any child and the said I was another adopted child through this court's adoption cause number of E010 of 2024. I have perused this court's record in respect of the said cause and I have confirmed from the records of the court that the adoption cause was concluded on 25-04-2024 where the applicant was granted adoption. The applicant added that her motivation to adopt the child was her need to have more children and her daughter I to have a sister. She told the court that her family had agreed to her adopting the child herein.
9. The child was found abandoned at an arrow root plantation in [Particulars Withheld] village in Kayole market in Murang'a County. This was on 3-07-2020. The child was rescued by a good samaritan who was identified as AM who reported to Mananja police post vide occurrence book entry number 08/03/07/2020. The child was admitted to Mogra Soul Winner Rescue Centre and taken to Thika level 5 hospital where she was admitted for treatment and discharged on 23-07-2020. She was later committed to the same rescue centre by Kigumo Senior Principal Magistrate court vide its protection and care case number 75 of 2020 on 29<sup>th</sup> October 2020. The police were unable to trace the parents or other relatives of the child which opened up the process of declaring the child free for adoption.
10. RAWM is the applicant's sister. She was appointed as the proposed Legal Guardian of the child. She appeared in court and confirmed to me on oath that she had signed a consent accepting to become the legal guardian and that she understood that once appointed, she will remain as such unless otherwise discharged. She also understood the ramifications of being appointed as the legal guardian and that she was ready and willing to take parental responsibilities and duties over the child in the event



the applicant becomes incapable or unavailable for the child. She signed a consent to that effect on 11-01-2024 which is part of the court's record.

11. The Guardian Ad Litem one PMS was appointed by this court 16-05-2024. She appeared before me and testified that upon her appointment, she proceeded to interview the applicant and assess the wellbeing of the child. Upon doing so, she formed an opinion that the applicant was suitable to adopt the child. She observed that the child had been taken good care of. She prepared a report dated 23-05-2024 which she produced in court. She did not mention the applicant having another child. The report recommends that the adoption orders be granted as sought.
12. I also received a report from Ezekiel Kimani who is an Assistant Director in the Directorate of Children Services. He testified that the directorate carried out due investigations, inquiries and assessment of the applicant. The results thereof were positive and by virtue of their report dated 2-04-2024, the directorate approved and recommended that the applicant adopts the child. According to the report the child was declared free for adoption by KKIP Adoption Society on 25-11-2020 vide certificate serial number 8XXXX. However, when the witness appeared before me on 2-10-2024, he clarified that he had checked their records and confirmed that the certificate freeing the child for adoption was serial number 8XXXX2 and dated 30-11-2020. He explained that the error must have been caused by the nature and volume of work in tehri office. He regretted the error, apologised and asked the court to take note that the directorate had no objection to the granting of adoption orders.
13. This court saw the child and engaged her in a short conversation. She told the court that she was in preprimary level one in [Particulars Withheld] School. From the conversation, the child appeared to me as well taken care of and happy. She was aware of her environment and she was notably comfortable with the company of the applicant.
14. Having heard the witnesses in this matter and gone through the documents produced by the witnesses especially the reports from the adoption society, guardian ad litem and the directorate of children services, I find that the best interest of the child will be served if the orders prayed for are granted.
15. The child deserves a home and caring family. The environment given by the applicant will definitely give the child a future. This should be the main point of consideration in a matter of this nature. I in the circumstances, have no hesitation in allowing the originating summons dated 11<sup>th</sup> January 2024 and consequently I issue the following orders;
  1. SWM is authorized to adopt Baby AN.
  2. The child shall henceforth be named as OSM.
  3. The child is declared to be a Kenyan citizen by birth and entitled to all rights, privileges and benefits of a Kenyan Citizen by birth.
  4. RAWM is hereby appointed as the Legal Guardian of the child.
  5. The Guardian Ad Litem is discharged.
  6. The Registrar General is directed to enter this adoption in the register of adoptions.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF OCTOBER 2024.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgement delivered online in presence of Mr. Odunga holding brief for Miss Ambaka for the applicant.

