



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re RAA (Baby) (Adoption Cause E002 of 2024)  
[2024] KEHC 11735 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11735 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
ADOPTION CAUSE E002 OF 2024  
WM MUSYOKA, J  
OCTOBER 4, 2024  
IN THE MATTER OF ADOPTION OF BABY RAA**

**RULING**

1. These adoption proceedings were initiated by an Advocate, for the applicant. However, at the critical stage, when the matter came up for hearing, on 17<sup>th</sup> September 2024, the Advocate abandoned her, yet there were serious legal issues, about her application, that required interrogation, and only her Advocate would have been of help.
2. When this matter came up on 26<sup>th</sup> June 2024, I directed the applicant to file a report of the adoption agency that was helping her arrange the adoption; and a certificate freeing the child for adoption. That had not been done, as at 17<sup>th</sup> September 2024, when the matter came up for hearing.
3. The most critical of the 2 documents is the certificate freeing the child for adoption. It is a condition precedent, for adoption proceedings cannot be mounted in respect of a child who is not free for that purpose. Before the adoption journey is embarked upon, the applicant should have, in her possession, a document which certifies that the child, that they seek to adopt, is free for adoption. It is one of the prerequisites stated in section 184 of the *Children Act*. It is the National Council for Children Services which issues that certificate. I have not seen one in these proceedings.
4. The involvement of an adoption agency is required by section 185(2) of the *Children Act*. There are 2 requirements there. The first is that the child should have been in the continuous care and control of the applicant, for a period of 3 consecutive months, preceding the filing of the application. The second is that the application is to be supported by a report made by a duly registered adoption agency, recommending the adoption. It is the report by that agency, which confirms that the child had been under the continuous care and protection of the applicant for 3 months. The social workers of the adoption agency would, no doubt, make an evaluation, in that report, of whether the applicant and the child had bonded enough for the proposed adoption to be allowed. That report was not filed.
5. As these 2 statutory requirements have not been met, the application is incomplete.



6. The age of the applicant should also be a matter of concern. Under section 186(2)(a) of the *Act*, the applicant ought to be a person of an age between 25 and 65 years. The applicant herein was born on 21<sup>st</sup> July 1954. This cause was initiated on 5<sup>th</sup> March 2024, when the applicant was approaching age 70. The applicant was, therefore, well outside the limitation, by nearly 5 years, as at the time she made the application. That would make her application incompetent. These are some of the issues that her Advocate should have attended court to address.
7. There is also the issue of citizenship. The applicant is a foreign national. The identification document that she has placed on record is a passport, issued by the United Kingdom of Great Britain and Northern Ireland. She mentioned that she is a Kenyan resident, and that she has applied for citizenship. No documents have been placed on record, to evidence that. The application before me remains that of a foreign national. That would make it an intercountry adoption application, yet there is an indefinite moratorium in place, on intercountry and resident adoptions of Kenyan children, anchored on certain provisions of the *Children Act*. It was approved by the Cabinet on 26<sup>th</sup> November 2014.
8. I note that the applicant was appointed a guardian of the subject child by the court, and has been living with the child since 2014/2015. However, the requirements set by the law, for an adoption order, have to be complied with. I will not dismiss the application outrightly. Instead, I shall give the applicant 30 days, to ascertain whether the situation can be salvaged, and to make necessary applications, if any. The matter shall be mentioned on 28<sup>th</sup> November 2024.
9. It is so ordered.

**DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS AT BUSIA THIS 4<sup>TH</sup> DAY OF OCTOBER 2024**

**W. MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Ms. Eva Adhiambo, legal researcher.

Ms. Ellen Alison, the applicant.

Baby RAA, the child.

Rev. Protus Kaita, guardian ad litem.

Ms. Esther Wasige, Busia County Director of Children Services.

Advocates

Mr. Masinde, instructed by Wesonga Masinde & Company, Advocates for the applicant.

