



**In re AH (Baby) (Adoption Cause E009 of 2022)
[2023] KEHC 1164 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E009 OF 2022
MW MUIGAI, J
FEBRUARY 16, 2023
IN THE MATTER OF CHILDREN ACT 2001
AND
IN THE MATTER OF BABY AH**

IN THE MATTER OF

FO 1ST APPLICANT

VA 2ND APPLICANT

JUDGMENT

1. The Applicant, FO and VA known as the Applicants herein sought by their application to allowed by this court to adopt Baby AH (hereafter' the child).
2. Vide Originating Summons application dated 14th day of November 2022, the Applicants sought among other orders that MO be appointed as the child's Guardian Ad Litem, that the Director Children Department, Ministry of Labor, Social Security and Services investigate the applicants fitness to adopt and file a report. That the applicants be authorized to adopt BABY AH and the child to be known as AHA, that the Director of Immigration be authorized to issue the child with a Passport. MO was appointed by this Court as Guardian Ad Litem on the November 16, 2022.
3. The child known as AH who is the subject of these proceedings was born to FAO on the 29th day of July 2013. At the time F was 25 years old. Andy's birth certificate as availed does not indicate the biological father. Flavia has been taking care of her son with the help of her parents until 2016 when she got married customarily to VA Awuor. The marriage was later formalized on October 30, 2021 *vide* marriage certificate serial No 322XXX. Adopting A was an issue agreed during the applicant's marriage vows. Baby A continued to grow under the care and custody of VA and FA O his mother. Andy has good relationship with his foster father who has been fully supporting and providing for baby Andy. The parents have nurtured him well and given him good education. He is in grade 2 at Mt



Sinai CMI School. The adoption sought is to legally make VA Awuor Andy father. Baby Andy was declared free for adoption *vide* Certificate of Declaration No 0552.

4. The following documents were availed from Buckner Kenya Adoption Services for baby AH
 1. Application letter from the parents to undertake adoption
 2. Filled up Form of social inquiry
 3. A copy of National Identification for the biological mother
 4. A copy of National Identification for the foster father
 5. A copy of Birth certificate for the child AH
 6. Certificate declaring a child free for adoption (No 0552)
 7. Police clearance certificate for both Applicants
 8. Financial documents
 9. Marriage certificates
5. Pursuant to Section 156(1) of the *Children Act*, Kenya Children's Home, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services, and this report was similarly in favor of the proposed adoption. The Guardian Ad Litem, MO also filed the statutory report pursuant to Section 160(2) of the *Children Act* in which she noted that the proposed adoption of the child.
6. The Buckner Kenya Adoption Service filed their report on November 15, 2022. Ms Irene Ogutu from the agency appeared in Court on December 13, 2022. The report contains family and professional background information of the Child's Adoptive Parents. According to the report the baby AH the child subject of these proceedings was born to Flavia Adhiambo Omundo (the 1st applicant herein) on July 29, 2013. The biological father's name is not indicated on the child's birth certificate. The 1st Applicant took care of the son alone as a single parent with the support of her parent until 2016 when she got married to VA the 2nd applicant herein.
7. The Applicants approached the Buckner Kenya Adoption Services on May 24, 2022 with a view of adopting their son. The case committee of Buckner Kenya Adoption Services as prescribed by Regulations 16 of the Adoption Regulations 2005 deliberated on this matter in a meeting held on June 3, 2022. The committee was satisfied that the child in this matter baby AH is available for the kinship adoption and further that the adoption would be in the child's best interest. The Child subject of these proceedings was declared free for Adoption *vide* certificate of declaring a child free for adoption Serial No. 0552. They recommended the adoption.
8. The Director of Children Services through a Report dated December 13, 2022 in respect of the proposed adoption of the child by the Applicants was prepared by Emily Kimanzi of Athi River Sub – County Children's Officer. The said Emily Kimanzi Athi River Sub-County Children's Officer appeared in Court on December 13, 2022. The report contains family and professional background information of the Child's Adoptive Parents. The adoptive father is employed By Ramstad in United States while the mother operates her own business for events. Hence, they are financially and economically capable to take care of the child. During the home visit it was observed that the family lives in a 4 bedroomed house at Syokimau. The house is rental at (kshs) 40,000. The 2nd Applicant VA has taken a very bold step of going through this kinship process a sign of this commitment to giving



- the minor the best that he can provide. They recommend that the Applicants be allowed to adopt the minor.
9. The Guardian ad Litem, MO filed her Report dated December 13, 2022 in support of these Adoption proceedings. She appeared in Court on December 13, 2022. Her report stated that the 1st Applicant is her younger sister while the 2nd Applicant is her brother in law. That the applicants have one child of their own by the name JA aged 3 years and that they wish to adopt baby AH. During several visitation at their home she had observed that the Applicants interact well with the minor, they have ensured the needs of the minor are well attended by providing shelter, accommodation as well as the necessary emotion support. The minor is enrolled at Mount Sinai CMI School. The Guardian Ad litem recommended the adoption.
 10. The Legal Guardian MO filed her letter of consent dated July 26, 2022. The said document stated that she understands that as the legal guardian she is expected to take over parental responsibility over the minor in case of any eventuality of the Applicants or total incapacitation and disability. She recommended the adoption.
 11. All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a kinship adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
 12. The guardian ad litem, the Adoption Society and the Director of the Children's Services established that the Applicants are financially and socially stable and have emotional capability to provide for the upkeep and education of the child and give parental care. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well. The child considers the Applicants to be his parents.

Disposition

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein by this Court allows the Applicant's application.
2. The Applicants, FO and VA are hereby allowed to adopt Baby AH. Henceforth, the child shall be known as AHA.
3. That the child's date of birth is July 29, 2013 and the place of birth shall be Migori County.
4. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
5. This Court directs the Registrar General to duly enter this order in the Adoption Register.
6. The Director of immigration is hereby directed by this Court to issue the child with the passport at the instance of application by the parents.
7. That the Director of Children to carry out supervision on the said adoption and file a report on the ongoing safety/security within one year of the Adoption as stipulated under Section 4 of the *Children's Act* 2022.
8. The Guardian ad litem is hereby discharged.



It is so ordered.

**DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS THIS 16TH DAY OF
FEBRUARY, 2023 (PHYSICAL/VIRTUAL CONFERENCE).**

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF:

MR. MULI -.FOR THE APPLICANTS

GEOFFREY/PATRICK/ COURT ASSISTANT(S)

