



**In re HA aka an abandoned Baby Girl (Minor) (Adoption Cause E007 of 2022)
[2023] KEHC 3044 (KLR) (Family) (16 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3044 (KLR)

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

FAMILY

ADOPTION CAUSE E007 OF 2022

EKO OGOLA, J

MARCH 16, 2023

IN THE MATTER OF THE CHILDREN’S ACT, 2001

AND

**IN THE MATTER OF ADOPTION OF BABY HADASSA
AMANA AKA AN ABANDONED BABY GIRL (MINOR)**

BY

IN THE MATTER OF

CNM 1ST APPLICANT

LNM 2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated February 4, 2022 by which the applicants CNM and LNM seek the following orders: -
 1. That the Applicants be authorized to adopt BABY HA , a minor who is to be known as IWN and the Registrar General be directed to enter this adoption into the Register of Adoptions
 2. That ANM and WNN be appointed as the legal guardians of the minor presumed to have been born in Kenya.
2. The Summons was supported by the statement of even date sworn jointly by the applicants and an Affidavit in support. The matter was canvassed by way of viva voce evidence on the online platform.
3. PW1 was LNM A the 2nd Applicant herein who relied on her statement dated February 4, 2022. She testified she has been married to the 1st Applicant for the last 10 years but they do not have a child of their own; that the child in question was placed in their care on February 23, 2021 and they have



- bonded well. PW1 testified that the child has been accepted into their respective families. She testified that she understands the effect of adopting a child and is ready to adopt the child.
4. PW2 was CNM the 1st Applicant herein who relied on his statement dated February 4, 2022. He testified she has been married to the 2nd Applicant for the last 10 years but they do not have a child of their own; that the child in question was placed in their care on February 23, 2021 and they have bonded well. PW2 testified that the child has been accepted into their respective families. He testified that he understands the effect of adopting a child and understands that the child is entitled to inherit his property and he is ready to adopt the child. PW2 testified that he is self-employed in the ICT sector and therefore able to provide for the child.
 5. PW3 was Susan Nyawira Munene. She testified that she is the court appointed guardian Ad litem for the child. PW3 testified that she filed a report on January 27, 2023 recommending the adoption.

Determination

6. I have carefully considered this application for adoption; the various Affidavits and Reports on record as well as the relevant law. I have also considered the evidence adduced in open court. The preliminary requirements for the making of an Adoption Order are set out in Section 156(1) of the Children's Act 2001 which provides as follows: -

“ 159 (1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
7. The subject child was born on July 15, 2019 as evidenced by the birth notification serial number 837xxxx annexed at page 32 of the Applicant's bundle of documents. The child is now about three (3) years seven (7) months old well above the six (6) week age limit provided for in law. The Child was found abandoned by a good Samaritan near Maili Saba disoensary in Laikipia on July 15, 2019.
8. The child was placed at Neema House Infant Rescue Centre- Nanyuki. Thereafter Nyahururu Children's Court committed the child to same home on July 18, 2019. The child was declared free for Adoption as per the Certificate Serial Number 00xxxx by Change Trust Adoption society vide a certificate to declare a child free for Adoption. On February 23, 2021 the child was released into the custody of the Applicants under a Foster Care Agreement. The legal pre-requisites for an adoption order have accordingly been met.
9. The duty of this Court is to analyze the material placed before it and make a determination as to whether the Applicants are suitable adoptive parents. The Applicants are a married couple and Kenyan citizens. Their marriage certificate serial number 45XXXX is marked is attached at page 5 of their documents. Their copies of National Identity Cards are attached at pages 1-4.
10. The Applicants are financially stable as evidenced by their bank statements and the certificates of title to land at pages 21-24 of the bundle of documents. The report by the Guardian ad Litem states that the Applicants are financially stable and in a good position to provide for the needs of the child.
11. The Applicants were examined and found to be physically and mentally fit. Copy of their medical report are at pages 13-18. The Applicants have also annexed copies of their Certificates of Good Conduct at page 27 and 28 issued by the Kenya Police Service which prove they have no criminal antecedents.



12. The Applicants have appointed ANM and WNN as a Legal Guardians of the child. The legal guardians have signed a consent dated June 17, 2019. The letter of consent, and the copy of their Identity Cards have been provided at pages 29-31 of the Applicants' bundle of documents.
13. Given that this child was abandoned by her biological mother there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances I dispense with the requirement for consent in line with Section 159(1)(e) of the *Children's Act*.
14. Based on the foregoing I am satisfied that the applicants are suitable adoptive parents.
15. Article 14 of the *Constitution* of Kenya 2010 deals with 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.”
16. The subject child was abandoned at birth in Maili Saba which is in Laikipia County within the Republic of Kenya. She is therefore presumed to be a Kenyan citizen by birth and I so declare.
17. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. Section 44(2) of the *Children Act* 2001 provides: -
 - “(2) 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”.
18. The child has lived with the Applicants in their home since she was about one and half years old up to the present date. There is no doubt that the child has bonded with the Applicants and considers them as her parents.
19. The various reports filed in court all recommend the adoption. I am satisfied that the adoption will serve the best interests of the subject child. Accordingly, I allow this application and make the following orders: -
 1. The Applicants CNM and LNM are authorized to adopt the child known as BABY HA .
 2. Upon adoption the child will be known as IWN .
 3. The child is declared Kenyan Citizen by birth and is entitled to all the rights and liberties due to a citizen of Kenya.
 4. The Registrar General is directed to make appropriate entries in the Adopted Children's Register
 5. ANM and WNN are appointed as Legal Guardians of the child.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF MARCH 2023.

E K OGOLA

JUDGE



Judgment read and delivered online in the presence of:

M/s Kemunto for the Applicants

Ms Gisiele Court Assistant

