In re Baby AZ (Adoption Cause E111 of 2022)
[2023] KEHC 1713 (KLR) (Family) (3 March 2023) (Judgment)

Neutral citation: [2023] KEHC 1713 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

ADOPTION CAUSE E111 OF 2022

MA ODERO, J

MARCH 3, 2023

N THE MATTER OF CHILDREN'S ACT NO 8 OF 2001

AND

IN THE MATTER OF ADOPTION OF BABY AZ
AKA ABANDONED FEMALE INFANT (THE CHILD)

IN THE MATTER OF

JNK ..... APPLICANT

JUDGMENT

1. Before this court is the originating summons dated July 12, 2022 by which the applicant JNK seeks the following orders:-

   " 1. That the applicant be authorized to adopt baby AZ aka abandoned female infanT, a child who is to be known as AM and the Registrar General be directed to enter this adoption into the register of adoptions.

   2. That ALWK and RKM be appointed as the legal guardians of the minor.

   3. That the child be presumed to be born in Kenya"

2. The application was supported by the statement of even dated sworn by the applicant. The matter was canvassed by way of *viva voce* evidence on the virtual platform.

3. The applicant is a single woman who has never been married and who has no biological child of her own. She now seeks to adopt the subject child in order to have a child of her own and out of her desire to provide a needy child with a home.

4. The applicant confirmed to the court that she understands the legal implications of an adoption order. She undertakes to accord to the child all rights due to a biological child including the right to inherit.

Analysis and Determination

5. I have considered this application, the reports filed in court as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in section 184 (1) of the *Children Act 2022* which provides –

> " 184(1) A person shall not commence any arrangements for the adoption of a child unless –
>
> a. the council in accordance with the rules has declared the child free for adoption.
>
> b. the child has attained the age of six weeks."

6. The subject child is believed to have been born on or about May 21, 2021. Therefore the child is now aged one and a half (1 ½) years old and is above the six (6) week age limit provided for by law.

7. Buckner Kenya Adoption Services which is a registered adoption agency have annexed to their report the original copy of their certificate serial number xxxx dated February 18, 2022 declaring the child free for adoption. Accordingly I am satisfied that the legal prerequisites for an adoption order have been met.

8. The duty of this court is to analyze the evidence on record to determine whether the applicant is a suitable adoptive parent.

9. The applicant is a Kenyan citizen as evidenced by the copy of her national identity card which is annexed to the summons. The applicant has never been married and has no biological child of her own. The applicant stated that she wishes to adopt in order to have a child to call her own. She also wishes to provide a needy child with a home.

10. The applicant is in gainful employment. She is a business woman involved in the construction business running a company known as '[particulars withheld]'. She has annexed copies of bank statement for an account held with Co-operative Bank (pages 22-32)

11. Additionally the applicant owns land in Sagana and has annexed a copy of the title deed (page 33). I am satisfied that the applicant is financially stable and is able to provide for the needs of the child.

12. The applicant is a christian and intends to raise the child in the christian faith. She has annexed a copy of a letter of recommendation dated January 20, 2021 written by Joseph Ole Sapati the pastor in-charge at Healing of the Nations Ministries where applicant worships.

13. The applicant was examined by a doctor and was found to be physically and mentally fit. The applicant has annexed a copy of a clearance certificate issued to her by the Directorate of Criminal Investigations proving that she has no criminal record.

14. The applicant stated that her family are aware of and support her intention to adopt the subject child. She has appointed her sister and brother-in-law as the legal guardians for the child. The proposed legal guardians ALWK and RKM have both signed a consent dated July 12, 2022 confirming their willingness to act as the legal guardians for the child.

15. All in all I am satisfied that the applicant is a suitable adoptive parent.

16. The subject child is a girl-child who is believed to have been born on May 21, 2021. The child was abandoned on June 15, 2021 at the age of one (1) month at [particulars withheld] near Kenyatta University. A good samaritan rescued the child and rushed her to Ruiru sub-county Hospital for medical attention. The abandonment was reported at Kahawa Sukari police station *vide* OB number xxxx of June 15, 2021.

17. Thereafter on August 20, 2021 the Ruiru Childrens Court committed the child to New Life Home Trust for care and protection. On March 25, 2022 the child was released into the custody of the applicant under a foster care agreement.

18. Article 14 (4) of the *Constitution* of Kenya 2010 provides that:-

> "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 of Kenya."

19. The subject child was found abandoned at the age of one(1) month in Nairobi county in the Republic of Kenya. The child is therefore presumed to be a Kenyan citizen by birth.

20. Efforts to trace the biological mother of the child have borne no fruit. To date no person has come forward to claim the child. A final police letter dated February 3, 2022 is annexed to the summons.

21. Given the fact of the child's abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 187 (1) (a) of the *Children Act 2022*.

22. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the *Children Act 2022* provides:-

> "(8). (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
>
> (a) the best interests of the child shall be the primary consideration;" (own emphasis)

23. This is a child who was abandoned shortly after her birth, she faced an uncertain future living in children homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment.

24. The child has lived the applicant for over one (1) year. The child has bonded with the applicant and views her as her mother. I was able to see the child online. She was a healthy peaceful toddler keenly observing the camera. The child was obviously very comfortable in the company of the applicant.

25. A home visit was conducted on December 21, 2022. The applicant lives in her father's home but is currently constructing a house for herself. The home was a spacious four (4) bed-roomed bungalow in Ngong. The home was found to be a conducive environment for the child.

26. I have carefully perused the reports prepared by the adoption agency, the guardian *ad litem* and the director of children services. All three reports were positive and all recommend the adoption.

27. Finally I am satisfied that this adoption does serve the best interest of the subject child. Accordingly I do allow this application and make the following orders:-

1. The applicant JNK is authorized to adopt the child known as Baby AZ aka abandoned female infant.
2. Upon adoption the child will be known as AM .
3. The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and privileges thereto.
4. ALWK and RKM are appointed as the legal guardians of the child.
5. The Registrar-General is directed to make the relevant entry in the adopted Children's Register.

DATED IN NAIROBI THIS 3RD DAY OF MARCH 2023.

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MAUREEN A. ODERO

JUDGE