



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby HU (Adoption Cause E141 of 2021)
[2023] KEHC 1719 (KLR) (Family) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1719 (KLR)

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

FAMILY

ADOPTION CAUSE E141 OF 2021

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 HU ALIAS UNKNOWN
BABY GIRL ALIAS ABANDONED CHILD (THE CHILD)**

IN THE MATTER OF

CKG 1ST APPLICANT

SWK 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated October 18, 2021 in which the Applicants CKG and SWK seek the following orders:-

- “1. Spent
2. Spent
3. That the Applicants be authorized to adopt HU alias unknown baby girl alias abandoned child to be known as AWK.
4. That the child be presumed a Kenyan Citizen by birth.
5. That child's date of birth be June 6, 2019 and the place of birth be Kariobangi Nairobi.
6. That the Registrar General be directed to enter the adoption in the Adopted Children's Register.



7. That the Director Immigration be authorized to issue the child with a Kenyan passport.
2. The Application was supported by the statement of even date sworn by the Applicants. The matter was canvassed by way of *vice voce* evidence on the virtual platform.
3. The Applicants are a couple who got married to each other in the USA in January 2008. The couple have no biological children of their own but they do have an adopted son now aged five (5) years old. The Applicants now wish to adopt the subject child in order to expand their family.
4. The Applicants both confirmed to the court that they understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to a biological child including the right to inherit.

Analysis and Determination

5. I have carefully considered this application for adoption, the evidence adduced in support thereof as well as the various reports in court. The prerequisites which must be met before an adoption order can be made are set out in Section 184 (1) (a) and (b) of the [Children's Act 2022](#) as follows:-
 - “(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; and
 - (b) the child has attained the age of six weeks.”
6. The subject child is believed to have been born on June 6, 2019. The child is therefore now aged three (3) years old and is above the six (6) week age limit provided for in law.
7. Buckner Kenya Adoption Services have annexed to their report the original of their certificate Serial Number xxxx dated February 5, 2021 declaring the child Free For Adoption (Annexure ‘CSK-5’). 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 Applicants are suitable adoptive parents. The Applicants are both Kenyan citizens as evidenced by the annexed copies of their National Identity Cards (Annexures ‘CSK-7’).
9. The Applicants are a couple who met and got married on January 5, 2008 in Washington USA. They have annexed a copy of their Marriage Certificate issued to them in the USA (Annexure ‘CSK-8’)
10. The Applicants have no biological children together although the 1st Applicant has an adult daughter from a previous relationship. The couple do however have a son whom they adopted in the year 2020. A copy of the certificate of entry in the Adopted Children Register dated July 7, 2021 is annexed to the summons (Annexure ‘CSK- 9’). The Applicants now wish to adopt the subject child in order to expand their family.
11. The Applicants are gainfully employed. The 1st Applicant who holds a PHD works as a Social Worker at the Bethesda Lutheran Communities and is also a part-time lecturer. The 2nd Applicant who holds a degree in Finance is currently a homemaker. The couple also own plots of land in Ruiru and Kajiao and hold shares on the Nairobi Stock Exchange. They have annexed copies of their Title Deeds and



- Share Certificates (Annexures ‘CSK-9’). I am satisfied that the Applicants are financially stable and are able to provide for the needs of the two (2) children.
12. The Applicant are both Christians and intend to raise the child in the Christian faith. Annexed to the summons (Annexure ‘CSK 10’) is a copy of a letter of recommendation dated December 16, 2017 written by Rev HKN of the {particulars withheld} Ministry.
 13. The Applicants were both examined by a doctor and were found to be physically and mentally fit. They have annexed copies of clearance certificates issued to each by the Directorate of Criminal Investigation (Annexure ‘CSK-13’) proving that neither has a criminal records.
 14. The Applicants told the court that their extended families are aware of and support their intention to adopt the child. They have appointed their close family friends as legal guardians for the child. The proposed legal guardians HKN and MNK have signed an Affidavit of consent dated October 18, 2021 confirming their willingness to act as legal guardians for the child (Annexure ‘CSK-15’)
 15. All in all I am satisfied that the Applicants are suitable adoptive parents.
 16. The subject child is a girl-child who is believed to have been born on June 6, 2019. The child was abandoned a day after her birth within the Majengo Slums in Nairobi County. A child Protection Volunteer rescued the baby and reported the matter at Kariobangi Police Station *vide* OB Number 56 of June 7, 2019.
 17. Thereafter on August 28, 2019 the Nairobi Children’s Court committed the child to Happy Life Children’s Home for Care and Protection. On March 5, 2021 the child was released into the custody of the Applicants under a Foster Care Agreement.
 18. Article 14 (4) of the [Constitution of Kenya 2010](#) provides that: -
 - “(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.”
 19. The subject child was abandoned a day after her birth in Nairobi County in the Republic of Kenya. She is therefore presumed to be a citizen of Kenya by birth.
 20. Efforts to trace the biological mother/relatives of the child have not been successful. To date no person has come forward to claim the child. A final Police letter dated January 22, 2021 is annexed to the summons (Annexure ‘CSK-4’).
 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. In the circumstances I waive the requirement for consent in line with Section 187(1) (a) [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 a day after her birth. She faced an uncertain future living in Children’s Homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment.
24. The child has lived with the Applicants in their home for close to two (2) years. I have no doubt she has bonded with the Applicants. Indeed this is the only family the child knows. I was able to see the child online. She was a healthy bubbly toddler who was obviously very comfortable in the company of the Applicants.
25. A Home visit was conducted on November 18, 2022. The Applicants reside at [Particulars withheld] Estate in Ruiru in a large spacious six (6) bed-roomed house. The home is close to major social amenities like schools, churches, hospitals etc. The home was found to be a conducive environment for raising the children. The Applicants have also employed a Nanny to help in caring for the children.
26. I have carefully perused the reports prepared by the Adoption Agency, the Guardian Ad litem and the Director Children’s Services. All three reports were positive and all recommend the adoption.
27. In conclusion I am satisfied that this adoption does serve the best interest of the subject child. Accordingly I allow this application and make the following orders:-
 1. The Applicants CKG and SWK are authorized to adopt the child known as HU alias Unknown Baby Girl alias Abandoned Child
 2. Upon adoption the child will be known as AWK.
 3. The child is presumed to be a Kenyan citizen by birth and is entitled to all rights and privileges thereto.
 4. The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.
 5. HKN and MNK are appointed as the legal Guardians for the child.

Dated in Nairobi this March 3, 2023 .

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MAUREEN A. ODERO

JUDGE

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