



REPUBLIC OF KENYA



**In re Baby RH (Adoption Cause E164 of 2022)
[2023] KEHC 1717 (KLR) (Family) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1717 (KLR)

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

FAMILY

ADOPTION CAUSE E164 OF 2022

MA ODERO, J

MARCH 3, 2023

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

AND

IN THE MATTER OF ADOPTION OF BABY RH AKA ANBBG (THE CHILD)

IN THE MATTER OF

SKM 1ST APPLICANT

JKK 2ND APPLICANT

JUDGMENT

1. Before this court is the Originating Summons dated 12th September, 2022 by which the Applicants SKM and JKR seek the following orders:-
 - “ 1. That the Applicants be authorized to adopt BRH, a child who is to be known as PKK and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 2. That JKK be appointed as the Legal Guardian of the child.
 3. That the child be presumed to be born in Kenya.
2. The Application was supported by the statement of even date sworn by the Applicants. The matter was canvassed by way of vive voce evidence on the virtual platforms.
3. The Applicants are a couple who got married to each other in the year 2017. The couple have no biological child of their own hence the desire to adopt a child.



4. The Applicants both confirmed that they understand the legal implications of an adoption order. They undertook to accord to the subject child all the rights due to a biological child including the right to inherit.

Analysis and Determination

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for an adoption order are set out in section 184 (1) (a) and (b) of the Children's Act 2022: -
 - “(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.”
7. The subject child is believed to have been born on/or about 27th October, 2021. The child is therefore now aged one and a half (1½) years old and is above the six (6) week age limit provided for in law.
8. Buckner Kenya Adoption Services which is a registered Adoption Society have annexed to their reports the original copy of their report Serial Number xxxx dated 19th May, 2022 declaring the child Free for Adoption. In the circumstance, I am satisfied that the legal prerequisites for an adoption order have been met.
9. The duty of the court is to analyze the evidence on record to determine whether the Applicants are suitable adoptive parents. The Applicants are both Kenyan citizens as proved by the annexed copies of their National Identity Cards. (Pages 1 and 2 of the summons.)
10. The Applicants are a married couple. They solemnized their union at the Word of Faith Church on 24th February, 2017. A copy of their marriage Certificate is annexed at page 3 of the summons. The couple have no child of their own hence the desire to adopt a child in order to complete their family.
11. The Applicants are both in gainful employment. The 1st Applicant is a graphic designer who is self employed. The 2nd Applicant is a trained counsellor and runs a counselling psychology consultancy. She has annexed a copy of Certificate of Registration for her business at page 34 of the summons. The Applicants have also annexed copies of bank statements for an account held with the Kenya Commercial Bank (Pages 26 – 31).
12. The couple also own property in Mavoko Town and in Kahawa. Together they realize a monthly income of approximately Kshs.200,000/= which is sufficient to provide for the needs of the child. I am satisfied that the Applicants are financially stable.
13. The Applicants are both Christian and intends to raise the child in the Christian faith. They have annexed at page 25 of the summons a letter of recommendation dated 7th October, 2021 written by Pastor KA of [Particulars Withheld] Church.
14. The Applicants were both examined by a doctor and were found to be mentally and physically fit. They have annexed copies of Clearance Certificates issued to each by the Director of Criminal Investigations (Pages 36 – 37) proving that neither has a criminal record.



15. The Applicants told the courts that their extended family are aware of and supports their intention to adopt the subject child. They have appointed the sister of the 2nd Applicant as the Legal Guardian of the child. The proposed legal guardian Jennifer Kirera has signed a letter of consent dated 5th October, 2021 (Page 39 of the summons) confirming her willingness to act as the Legal Guardian for the child.
16. All in all, I am satisfied that the Applicants are suitable adoptive parents for the child.
17. The subject child was born on 26th October, 2021. The day after her birth the child was found abandoned at [Particulars Withheld]. A good Samaritan who was working in his farm noticed the new born baby and rescued her. The baby was rushed to Shalom Hospital for medical care. The abandonment was reported at Athi River Police Station vide OB Number xxxx.
18. Thereafter on 5th November, 2021 the Mavoko Children’s Court committed the child to Mahali Pa Maisha Infants Rescue Center for Care and Protection. On 28th May, 2023 the child was released into the custody of the Applicants under a Foster Care Agreement.
19. 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.”
20. The subject child was found abandoned a day after her birth the Mavoko area of Machakos County within the Republic of Kenya. The child is therefore, presumed to be a citizen of Kenya by birth.
21. Efforts by police to trace the biological mother of the child have been unsuccessful. To date no person has come forward to claim the child. A final Police letter dated 4th May, 2022 is annexed at Page 43 of the summons.
22. Given the fact of 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.
23. 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)
24. This is a child who was abandoned a day after her birth. The biological mother was unable or unwilling to care for the child. The child faced an uncertain future living in Children’s Homes and other similar institutions. The adoption allows the child the opportunity to be raised in a loving and stable home environment.
25. The child has lived with the Applicants in their home for close to one (1) year. No doubts they have bonded and this is the only family the child knows. I was able to see the child online. She was a healthy happy toddler who was obviously at ease playing on the lap of the 2nd Applicant.



26. A home visit was conducted by the Children's Officer. The Applicants live in a two bed-roomed apartment in Kirigiti, Kiambu County. The house was found to be spacious and a conducive environment for the child. The Applicants have employed a Nanny to assist in caring for the child.
27. 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 recommended the adoption.
28. Finally, I am satisfied that the adoption does serve the best interest of the subject child. I therefore, allow the application and make the following orders:-
 1. The Applicants SKM and JKR are authorized to adopt the child known as BRH.
 2. Upon adoption the child will be known as PKK.
 3. The Registrar – General is directed to make the relevant entry in the Adopted Children's Registrar.
 4. The child is presumed to be a Kenyan Citizen by birth and is entitled to all rights and privileges thereto.
 5. JKK is appointed as the Legal Guardian for the child.

DATED IN NAIROBI THIS 3RD DAY OF MARCH, 2023.

MAUREEN A. ODERO

JUDGE

