



**In re CK (Child) (Adoption Cause E008 of 2020)
[2023] KEHC 1476 (KLR) (Family) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1476 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E008 OF 2020
MA ODERO, J
MARCH 3, 2023**

BETWEEN

LN APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. Before this court is the originating summons dated July 22, 2020 by which the applicant LN seeks the following orders:-
 - “ 1. Pursuant to article 14(4) of the *Constitution of Kenya*, 2010 and section 11 of the *Children’s Act*, 2010, this Honorable Court be pleased to declare that the child, is a Kenyan citizen by birth;
 2. Pursuant to the provisions of section 159 of the *Children’s Act*, 2001, this Honorable Court be pleased to dispense with the requirements of Consent to the adoption as required by the provisions of section 158 of the Children’s Act, 2001;
 3. The applicant, LN be authorized to adopt Baby Ck Alias unkown baby boy (the child);
 4. Upon the making of the adoption order, the child be known as EIK.
 5. Upon the making of the adoption order, KM be appointed as the leal guardian of the child as provided for by the provisions of section 164 of the *Children’s Act*, 2001;



6. Upon the making of the Adoption Order, the Registrar-General do make an entry recording the adoption and the estimated date of birth of the child as November 14, 2014 in the Adopted Children Register as provided for by section 170 of the *Children's Act*.
7. The costs of this Application be in the cause”
2. The Application was supported by the statement of even date sworn by the applicant. The matter was canvassed by way of *vive voce* evidence on the virtual platform.
3. The Applicant told the court that she is a single woman who has never been married. Due to medical complications the Applicant has no biological child of her own. She now wishes to adopt a child in order to fulfil her desire to have a child of her own.
4. The applicant confirmed to the court that she understands the legal implications of an adoption order. She undertook to accord to the subject child all rights due to a biological child including the right of inheritance.

Analysis and DeterminationK

5. 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* which provides 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 was born on November 14, 2014. A copy of his birth certificate serial No. xxx is annexed to the summons. The child is therefore now aged eight (8) years old and is well above the six (6) week age limit provided for in law.
7. Little Angels Network which is a registered adoption agency have annexed to their report, a copy of their certificate Serial No. xxx dated 17th June 2016 declaring the child free for Adoption. I am satisfied that all the legal prerequisites for an adoption 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 provided by the annexed copy of her National Identity Card. As stated earlier the Applicant has never been married and has no child of her own. She wishes to adopt a child in order to complete her family.
10. The Applicant is in gainful employment and runs a furniture business. She earns sufficient income to enable her provide for the needs of the child.
11. The Applicant is a Christian and intends to raise the child in the Christian faith.
12. The Applicant is a good physical and mental health. She has annexed to the summons a copy of a clearance certificate issued to her by the Directorate of Criminal Investigations proving that the Applicant has no criminal record.



13. The Applicant told the court that her extended family are aware of and support her intention to adopt the subject child. She has appointed a close family friend KM as the legal guardian for the child.
14. The proposed legal guardian has signed an Affidavit of consent dated July 22, 2020 confirming her willingness to act as the legal guardian for the child.
15. All in all I am satisfied that the Applicant is a suitable adoptive parent.
16. The subject child was abandoned immediately after birth in the bushes at Gatunya stage, Banana Location in Kiambu County. A group of church members from Karuri rescued the child and rushed him to Karuri Sub –County Hospital for medical attention.
17. The abandonment was then reported to Karuri Police Station *vide* OB Number 24 of November 14, 2014. Thereafter on February 3, 2015 the Kiambu Children Court committed the child to Petty Legacy Home for care and attention. On November 15, 2015 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 birth in Kiambu County within the Republic of Kenya. The child therefore presumed to be a Kenyan citizen by birth.
22. Efforts by police 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 June 4, 2015 is annexed to the summons.
23. Given the fact of his abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I waive the requirements for consent in line with Section 187(1) of the *Children's Act 2022*.
24. 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)
25. This is a child who was abandoned at birth. He faced an uncertain future living in various childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment. The child has lived with the Applicant in her home since November 2015 – a period of seven (7) years. I have no doubt that he has bonded with the Applicant whom he considers as his mother.
26. I was able to see the child online. He was a healthy and bright young boy and was able to articulately answer the questions put to him by the court.
27. A home visit was conducted on November 22, 2021. The Applicant lives in a three bed-roomed house at the [Particulars Withheld] Staff quarters. The home is in a secure environment with 24 – hour security. It was found to be a suitable environment to raise the child.



28. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Children Service. All three reports were positive and all recommend the adoption.
29. Finally I find that this adoption will serve the best interest of the subject child. This application is allowed and court makes the following orders:-
1. The Applicant LN is authorized to adopt the child known as baby CK alias unkown baby boy
 2. Upon the making of the Adoption Order, the child be known as EIK.
 3. The child is presumed to be a Kenyan Citizen by birth and is entitled to all the rights and privileges thereto.
 4. The Registrar General is directed to make the relevant entry in the Adopted Childrens Register.
 5. KM be appointed as the Leal Guardian of the Child.

DATED IN NAIROBI THIS 3RD DAY OF MARCH 2023.

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MAUREEN A. ODERO

JUDGE

