



**In re Baby CSM (Child) (Adoption Cause E037 of 2022)
[2023] KEHC 18397 (KLR) (Family) (19 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18397 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E037 OF 2022
MA ODERO, J
MAY 19, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY CSM (THE CHILD)**

IN THE MATTER OF

**AAC 1ST APPLICANT
RTC 2ND APPLICANT**

JUDGMENT

1. Before this court is the Amended Originating Summons dated January 24, 2023 by which the Applicant AAC and RTC seek the following orders:-
 1. That the Applicants herein AAC and RTC be and are authorized to adopt CSM.
 2. That HAM be appointed as a legal guardian of the minor herein in the event of death or incapacity of the Applicants rendering them unavailable or incapable of taking care of the child.
 3. That the Registrar General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register in respect of the minor CSM”.
2. The application was supported by the Statement dated March 22, 2022 sworn by the Applicants. The matter was canvassed by way of *vive voce* evidence on the virtual platform.
3. The Applicants are a couple who got married in April 2021. The couple have no children. They now wish to adopt the subject child who is the biological daughter of the female Applicant. The couple wish to adopt the child in order to integrate her fully as a family member.



4. The Applicants both confirm that they understand the legal implication of an adoption order. They undertake to accord to the subject child all rights due to a biological child including the right of inheritance.

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 before an adoption order can be made 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 a girl child who was born on April 5, 2022. A copy of her Birth Certificate Serial Number xxxx is Annexure ACC – 1 to the Summons. The child is now aged twelve (12) years old and is above the six (6) week age limit provided for in law.
8. Change Trust which is a registered Adoption Agency have annexed to their reports a Certificate Serial Number xxx dated February 11, 2022 declaring the child Free For Adoption. I find that the legal prerequisites for adoption have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicants are suitable adoptive parents.
10. The female Applicant is a Kenyan Citizen as evidenced by the copy of her National Identity Card which is annexed to the Summons. The male Applicant is a British Citizen. Copies of his Passport are Annexure AAC-4. The couple met in Kenya in the year 2014 and got married on April 21, 2021. A copy of their Marriage Certificate Serial Number xxxx appears as Annexure AAC-3.
11. The couple has no children together. They now seek to adopt the subject child who is the biological daughter of the female Applicant. The Applicant's wish to adopt the child in order to incorporate her fully as a member of their family unit.
12. The Applicants are both gainfully employed. The female Applicant runs a catering business whilst the male Applicant works as a fisherman and ship repairer in the United Kingdom. The couple have annexed copies of the male Applicant's bank statement issued by [particulars Withheld] Bank whilst the female Applicant has annexed copies of her Mpesa Statements (pages 66 – 88 of the Summons). I am satisfied that the Applicants are financially stable and have the means to provide for the child.
13. The Applicants are both Christians and intend to raise the child in the Christian faith. They were both examined by a doctor and were found to be mentally and physically fit.
14. The female Applicant has annexed a copy of the Clearance Certificate issued to her by the Directorate of Criminal Investigations (page 91) providing that she has no Criminal record. The male Applicant has annexed a copy of a Police Records Check, Certificate Number xxxx indicating that he has no Criminal record.
15. The Applicant State that their extended families are aware of and support their intention to adopt the subject child.



16. Section 186 (8) of the *Children's Act* provides that the consent of the parent of the child to be adopted must be sought and obtained. In this case the child's biological mother who is the female Applicant has given her consent for the adoption of her daughter by the male Applicant who is her husband.
17. The child's biological father one ANO is said to have separated with the child's mother when the child was eight (8) years old. The child's biological parents were never married to each other. The child's mother has maintained and provided for the child as a single parent. Indeed, vide an order issued on September 22, 2021 by the Children's Court in Case No 975 of 2021 the female Applicant sole custody care and control of the child. A copy of said order appears at page 16 of the Summons.
18. The child's biological father passed away on September 11, 2021. A copy of the Burial Permit Serial Number xxxx is annexed at page 51 of the Summons. In the circumstances no consent can be obtained from the child's father. I therefore, waive the requirement for his consent in line with Section 187 (1) (a) of the *Children Act*, 2022.
19. The Applicants have appointed the female Applicant's cousin as the legal guardian for the child. The proposed legal Guardian HAM has signed a consent dated January 11, 2022 confirming her willingness to be appointed as the legal guardian for the child.
20. All in all, I am satisfied that the Applicants are suitable adoptive parents.
21. 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)
22. The subject child who is a twelve (12) year old girl is the biological daughter of the female Applicant. The couple wish to adopt the child in order to make her a full member of their family unit.
23. Section 186(8)(c) of the *Children Act* 2022 provides as follows:-
 - (8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—
 - (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
 - (b) on the application of one of the spouses, the consent of the other spouse; and
 - (c) in the case of a child who has attained the age of ten years, the child himself or herself.” [own emphasis]
24. I was able to see the child online. She was a healthy cheerful and articulate young girl. The child referred to the male Applicant as her father. She indicated her willingness and consent to this adoption. The child has written a letter of consent dated December 14, 2022. I therefore, find that the consent of the child has been obtained as required by law.
25. This is a kinship adoption which is provided for by Section 193 of the *Children Act*. The child will remain in the custody and care of her biological mother and she will also retain close contact with her blood relatives.



26. A home visit was conducted by the Children’s Officer. The child resides with the female Applicant in a two bed-roomed house in [particulars Withheld] Estate. The home was well furnished in a secure environment and was found to be a suitable environment for the child.
27. I have 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.
28. Finally, I am satisfied that this adoption serves the best interest of the subject child. Accordingly, I allow the application and make the following orders.
 1. The Applicants AAC and RTC are authorized to adopt the child known as CSM.
 2. Upon adoption the child will be known as CSM.
 3. The Registrar-General is directed to make the relevant entry in the Adopted Children’s Register.
 4. HAM is appointed as the legal Guardian for the child.

DATED IN NAIROBI THIS 19TH DAY OF MAY, 2023.

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MAUREEN A. ODERO
JUDGE

