



**In re EC (Child) (Adoption Cause E150 of 2021)  
[2023] KEHC 18089 (KLR) (Family) (19 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18089 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E150 OF 2021  
MA ODERO, J  
MAY 19, 2023**

**IN THE MATTER OF**

**EWN ..... APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated November 5, 2021 by which the Applicant EWN seeks the following orders:-
  - ' 1. THAT AKN and EKM of PO Box xxxx-00100 Nairobi in the Republic of Kenya be appointed as legal Guardian.
  2. THAT this Honourable court adopts the consents of the biological parents of the child herein given on October 5, 2017 and February 4, 2021 and as attached to this Application.
  3. THAT the Applicant be authorized to adopt BABY EC to be known as EN.
  4. THAT the registrar of Births and Deaths do cause entry to be made in the Adoption Register with regard to the child and further that the Registrar of Births and Deaths do issue a Birth Certificate in respect thereof.
  5. THAT the Honourable court be pleased to make any further orders it deems necessary in the best interest of the child herein.
  6. THAT the costs be in the cause.'
2. The application was supported by the statements of even date sworn by the Applicant. The matter was canvassed by way of vive voce evidence on the virtual platform.



3. The Applicant is a single woman, who has never been married and has no biological child of her own. The Applicant now seeks to adopt the subject child in order to fulfil her desire to have a child of her own.
4. The Applicant assured the court that she fully understands the legal implications of an adoption order. She undertakes 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 was born at home on September 28, 2017. He is now aged six (6) years old and is above six (6) week age limit provided for in law.
8. Buckner Kenya Adoption Services which is a registered adoption agency have annexed to their report a copy of their certificate serial Number xxxx dated 1November 3, 2020 declaring the child Free For Adoption I am satisfied that the legal requirements for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identity Card which is annexed to the summons (Annexure 'EWN-1').
10. The Applicant is a single woman. She told the court that she has never been married and has no child of her own. The Applicant now seeks to adopt the subject-child out of her desire to have a child of her own. The Applicant is also motivated by her desire to provide a needy child with a home.
11. The Applicant is in gainful employment as an IT Manager with the [Particulars Withheld]. She has annexed a copy of her payslip as proof of employment (Annexure 'EWN-13'). The Applicant has also annexed copies of her Bank Statements for an account held with Standard Chartered Bank (Annexure 'EWN-16'). I find that the Applicant is financially stable and is able to provide for the needs of the child.
12. The Applicant is a catholic Christian and intends to raise the child in the Christian faith. She has been evaluated by a medical doctor and was found to be physically and mentally fit.
13. The Applicant has annexed a copy of the clearance certificate issued to her by the Directorate of Criminal Investigations (Annexure 'EWN-19') proving that she has no criminal record.
14. The Applicant told the court that her extended family are aware of and support her intention to adopt the subject child. She has appointed her brother and sister-in-law as the legal guardians for the child. The proposed legal guardians AKN and EKM have both signed Affidavit of consent dated November 5, 2021 confirming their willingness to act as the legal guardians for the child. (Annexure 'EWN-20')



15. The subject child is a boy-child who was born on September 28, 2017. The biological parents of the child were related and were not married to each other. According to luyua customary norms the child being the result of incest was viewed as a taboo child and could not be raised within the family. The parents then decided to give up the child for adoption.
16. On October 5, 2017 the parents approached Buckner Kenya Adoption Services and offered to given up the child for adoption.
17. Section 186(8)(a) 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.'
18. The parents were taken through the explanatory Memorandum which they signed on October 5, 2023 and also signed the initial consent. The parents returned two (2) years later on February 4, 2021 and signed the second consent to the adoption. I am satisfied that the consent of the biological parents of the child was sought and obtained as required by law.
19. 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;'
20. This is a child who was given up for adoption by his parents who felt unable to keep the child due to the circumstances of his birth and cultural taboos. The child 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.
21. The child has lived with the Applicant for the past two (2) years. He calls her 'Mum' and has undoubtedly bonded with the Applicant. I was able to see the child online. He was a healthy, cheerful boy who readily answered all the questions put to him. The child was obviously comfortable in the company of the Applicant.
22. A Home visit was conducted by the Children's Officer. The Applicant lives in a two bed-roomed house in the Kikuyu-Gitaru area. The home is in a well secured compound with ample space and facilities for the child. The home is in close proximities to social amenities like schools, hospitals, churches etc. The Applicant has also employed a Nanny to help her care for the child.



23. 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.
24. In conclusion I am satisfied that this adoption will serve the best interests of the subject-child. I therefore allow this application and make the following orders:-
- 1) The Applicant EWN is authorized to adopt the child known as BABY EC.
  - 2) Upon adoption the child will be known as EN.
  - 3) The Registrar-General is directed to make the relevant entry in the Adopted Children's Register.
  - 4) AKN and EKM are appointed as the legal guardians for the child.

**DATED IN NAIROBI THIS 19<sup>TH</sup> DAY OF MAY 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

