



**In re Baby A aka TB (Child) (Adoption Cause E161 of 2021)
[2023] KEHC 17915 (KLR) (Family) (15 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17915 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E161 OF 2021
MA ODERO, J
MAY 15, 2023
IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY A AKA TB (THE CHILD)**

IN THE MATTER OF

**WJO 1ST APPLICANT
MKM 2ND APPLICANT**

JUDGMENT

1. Before this court is the Originating Summons dated November 15, 2021 by which the Applicants WJO and MKM seek the following orders:-

- “1. That the consent of the biological parents of Baby A aka TB be and is hereby dispensed with since the infant was abandoned by her biological mother.
- 2. That the Applicants be and is hereby authorized to adopt Baby A aka TB and the child be called RBW henceforth.
- 3. That the Registrar-General do make the appropriate entries in the Adopted Children’s Register in respect of Baby RBW
- 4. That BO be appointed the legal guardian of RBW .
- 5. That the court does issue such other orders as may be necessary in the best interest of the child.
- 6. That the costs be in the cause.”



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 platform.
3. The Applicants are a couple who got married on the year 2011. The couple have no biological children together but have an adopted daughter aged nine (9) years old as well as an adopted son aged two and half (2 ½) years old. The couple now wish to adopt the subject child in order to expand their family.
4. The Applicants confirm 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 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 on February 10, 2019. She is therefore now aged four (4) years old and is above the six (6) week age limit provided for in law.
8. BUckner Kenya Adoption Services a registered adoption Agency have annexed to their report the original copy of their certificate serial Number xxx dated February 5, 2021 declaring the child Free For Adoption. I find that the legal prerequisites for an adoption order 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. The Applicants are both Kenyan citizens as evidenced by the annexed copies of their National Identity Cards. [Exhibit 10 (a) and 10 (b)]
10. The Applicants are a married couple who solemnized their union in Karen on November 29, 2013. A copy of their Marriage Certificate Serial Number xxxx is annexed to the summons (Annexure '11'). The couple have no biological children but they do have two adopted children aged nine (9) and two (2) years. The couple now wish to adopt a third child in order to expand their family.
11. The Applicants are both in gainful employment. The Applicants are both self-employed and run a business together. They have annexed copies of bank statements from Standard Chartered Bank and NCBA. I satisfied that the Applicants are financially stable and are capable of providing for the needs of the three young children.
12. The Applicants are both Christians who worship at the Athi River ACK Church. They intend to raise the child in the Christian faith. Both applicants were examined by a Doctor and were found to be mentally and physically fit.
14. The Applicants have annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations (Annexure '12'). This proves that neither has a criminal record.



15. The Applicants stated that their families are aware of and support their intention to adopt the child. They have appointed the 1st Applicant's sister as the legal guardian for the child. The proposed legal Guardian BO has signed a consent dated November 18, 2021 confirming her willingness to act as legal guardian for the child.
16. All in all I am satisfied that the Applicants are suitable adoptive parents.
17. The subject child was born on February 10, 2019 at the Bristol Park Hospital in Fedha Estate. The baby developed complications at birth requiring that she be placed on oxygen. The child's mother sneaked out of the hospital leaving her baby behind. The child remained admitted at the hospital for nine (9) days. The biological mother never returned to claim her baby.
18. The abandonment was reported at Embakasi Police Station vide OB Number xxx of 18th February 2019. Thereafter on 24th October 2019 the Nairobi Children's Court committed the child to Imani Children's Home for care and Protection. On 1st July 2021 the child was released to the custody of the Applicants under Foster Care Agreement.
19. Given the fact of her 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.
20. Efforts to trace the biological mother of the child have borne fruit. To date no person has come forward to claim the child. A final Police letter dated 8th December 2020 is annexed to the summons
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. This is a child who was abandoned at birth. She faced an uncertain future living in various children homes. This adoption allows the child the opportunity to be raised in a loving and stable home environment.
23. The child has lived with the Applicants since July 2021. She has no doubt bonded with the Applicants and their family. I was able to see the child online. She was a healthy precocious and confident toddler who demanded to know the Judge's name. The child was obviously very comfortable in the company of the Applicants.
24. A Home visit was conducted by the Children's Officer. The Applicants live in their own home in Athi River. The home is a spacious four Bed-roomed house within its own compound. The home has adequate space and facilities and was found to be conducive environment to raise a young child. The Applicants have also employed a Nanny to assist in caring for the child.
25. 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.



26. Finally I am satisfied that this adoption serves the best interest of the child. Accordingly I allow this application and make the following orders:-

- (1) The Applicants WJO and MKM are authorized to adopt the child known as Baby A aka TB .
- (2) Upon adoption the child will be known as RBW .
- (3) The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
- (4) BO is appointed as the legal guardian for the child.

DATED IN **NAIROBI** THIS **15TH** DAY OF **MAY, 2023**.

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MAUREEN A. ODERO

JUDGE

