



REPUBLIC OF KENYA



**In re baby H aka TB (Child) (Adoption Cause E030 of 2023)
[2023] KEHC 18364 (KLR) (Family) (12 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E030 OF 2023
PM NYAUNDI, J
MAY 12, 2023
IN THE MATTER OF THE CHILDREN'S ACT NO. 29 OF 2022
IN THE MATTER OF BABY H AKA TB (THE CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY AWG**

JUDGMENT

1. The Applicant, AWG vide Originating Summons dated 23rd February 2023 has made an application for the adoption of baby H aka TB the minor herein. The Applicant a Kenyan Citizen, single and of the Christian faith. She is an Accountant currently employed at [Particulars Withheld]. She avers that she has the financial means and capability to take care of the Child. She has presented her contract of employment, financial statements to demonstrate that she is in gainful employment.
2. The Minor was found abandoned on 8th October 2021 in Suna West Sub County by a good Samaritan who reported the matter to Kowino patrol base and the minor was referred to Migori Referral Hospital. Upon discharge from hospital, she was placed at New Life Home Trust Kisumu.
3. She was later formally committed to the Children home vide Migori Children Court Care and Protection case No. xxxx. By letter dated 23rd August 2022, the police confirmed that no one had come forward to claim the Child. The child was placed with the Applicant on 30th September 2022, pending adoption. Buckner Kenya Adoption Services prepared a report and confirmed the child was free for adoption vide certificate Serial No. xxxx.
4. Th Applicant has another child aged 8 years, who is happy to be getting a baby sister.
5. PW2 PNK is the Guardian Ad Litem. After conducting home visit, interviewing the Applicant she is satisfied that the child and the applicant have bonded well and recommends the adoption vide her report dated 23rd March 2023.



6. PW3 PERIS KAHARA , is an employee of Buckner Kenya Adoption society. She confirms that they prepared a report on the suitability of the Applicant. The report dated 21st March 2023 supports the adoption.
7. PW4 Winfred IkinyA, is the Assistant Director at the Directorate of Children Services. She submits the report dated 14th April 2023, that details the particulars relating to the Applicant and the minor and confirms that the Applicant meets the legal requirements to adopt the minor. The report is prepared by her colleague Ezekiel Kimani.
8. PW5 NWG is the proposed legal Guardian. She is a sister to the Applicant and consents to being appointed Legal Guardian. She understands the commitment she has made with regards to the child's welfare and confirms that in the event the Applicant is unable to fulfil her obligations she will take responsibility for the minor.
9. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the [Children Act](#), 2022 provides.
 - 1) The Court may make an adoption order on application by—
 - a. a sole applicant; or
 - b. two spouses jointly.
 - 2) The Court shall not make an adoption order in any case unless—
 - a. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - b. the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
 - 3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.
10. The Applicant is aged 41years.
11. Article 53 of [the Constitution](#) of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child's Best interests are of paramount importance in every matter concerning the child
12. This principle is restated in Under Section 8 of the [Children Act](#), 2022 which provides
Best interests of the child.
 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;
 - b. the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.



Section 194 (1) (c) of the Act also requires that if the adoption order is made

the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;

13. In view of the foregoing the court is of the considered view that it is in the child's best interest to be adopted by the Applicant. Accordingly, I allow the prayers sought in the Originating Summons dated 23rd February 2023 and order as follows:
- i. The Applicant AWG is allowed to adopt baby H aka TB
 - ii. The Child to be known as AHM
 - iii. The child is presumed a Kenyan Citizen born on 23rd September 2021
 - iv. NWG is hereby appointed as legal guardian of the Child
 - v. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children and a birth certificate do issue by the Registrar of Births and Deaths
 - vi. The Guardian Ad Litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 12TH DAY OF MAY, 2023.

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P M NYAUNDI

HIGH COURT JUDGE

In the presence of;

Karani Court Assistant

