



**In re Baby NK (Child) (Adoption Cause E177 of 2022)
[2023] KEHC 17911 (KLR) (Family) (5 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E177 OF 2022
MA ODERO, J
MAY 5, 2023**

IN THE MATTER OF

**BJA 1ST APPLICANT
NAO 2ND APPLICANT**

JUDGMENT

1. Before this court is the originating summons dated September 26, 2022 by which the applicants BJA and NAO seek the following orders:-
 - “ 1. That the applicants , BJA and NAO be and are hereby authorized to adopt baby NK and the child be called NKA after adoption.
 2. That BAO be and is hereby appointed Legal Guardian of the child in the event a misfortune befalls 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 NKA.
 4. That the child was born in Kenya of Kenyan parents and is therefore a Kenyan by birth and is entitled to a Kenyan Passport.”
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 married couple who reside in California, USA. They have two (2) daughters aged eighteen (18) and fifteen (15) years old. The applicants now wish to adopt the subject child who is a niece of the 2nd Applicant – being the daughter of the elder sister of the 2nd Applicant.



4. The applicants confirm that they both understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to as 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 is a girl child who was born on May 18, 2005. A copy of her Birth Certificate Serial Number XXXX is annexed to the summons (exhibit 18). The child is therefore, aged seventeen and a half (17 ½) years old and is well 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 copy of their Certificate Serial Number 00417 dated August 6, 2021 declaring the child Free for Adoption. I find that the legal prerequisites for an adoption order have been met.
9. The applicants are both Kenyan Citizens as proved by the annexed copies of their National Identity Cards exhibit 1(a) and 1(b).
10. The couple reside in O California USA.
11. The applicants got married in the USA on March 29, 2016 they have annexed a copy of their Marriage Certificate Serial No. 000128 (Exhibit 3). The couple have no biological children together but are raising the two daughters born by the 2nd Applicant from a previous union.
12. The applicants now wish to adopt the subject child who is the daughter of the 2nd Applicant's sister. They state that the child's mother is a trader who has not been able to meet all the needs of the child. The applicants say that they have been providing for the educational needs and upkeep for the child. They now wish to adopt the child in order to fully incorporate her as a member of their family.
13. The applicants are both in gainful employment. The 1st Applicant works as a Software Engineer whilst the 2nd Applicant is a Registered Nurse. They have annexed their Income Tax Returns as proof of income (Exhibit 8). Together the Applicant realize a joint monthly income of approximately Kshs.2.0 million, which is sufficient to enable them provide for the needs of the child.
14. The applicants were both examined by a doctor and were found to be physically and mentally fit. They have annexed copies of Clearance Certificates issued to them by the Directorate of Criminal Services providing that neither has a criminal record [Exhibits 6(a) and 6 (b)].
15. The applicants told the court that their extended family are aware of and support their intention to adopt the subject child. They have appointed the 2nd Applicant's sister as the Legal Guardian for the child.



16. The proposed legal Guardian BAO has signed an Affidavit of Consent dated September 26, 2022[Exhibit 17 (a)] indicating her willingness to be appointed as the legal Guardian for the child.
17. “Section 186(8) (a)of the *Children Act* 2022 provides that –
 - (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]
18. The child’s biological mother CO testified in court. She confirmed that the 2nd Applicant was her sister. The mother stated that she was a single mother and that the child’s biological father passed away when the child was an infant.
19. The mother told the court that she has experienced great difficulty in providing for her two daughters and states that the applicants have been assisting in paying school fees and meeting the other needs of the child.
20. The child’s mother confirmed that she was aware of and gives her consent to the adoption of her child by the applicants . She further confirmed that she understood the legal implications of an adoption order and understood that an adoption order once made is irreversible.
21. The mother signed the Certificate of Acknowledgement dated July 9, 2021.
22. The subject child NA also testified in court. She too stated that she understood that adoption would make her the legal child of the applicants . The child confirmed that she knew the applicants very well as her Aunt and Uncle and confirmed that they have been providing for her school fees and upkeep.
23. The child told the court that she fully consents to her adoption by the applicants . The child was also written a letter dated January 9, 2021confirming her consent to the adoption [Exhibit 10 (a)]
24. I am therefore satisfied that the requisite consents for this adoption have been sought and obtained.
25. 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)
26. This is a kinship adoption which is provided for by section 193 of the *Children Act* 2022. The child will remain within the same family unit and will retain in contact with her blood relatives. The applicants are person who are well known to the child – She will be comfortable living with their family.
27. Finally, I am satisfied that this adoption serves the best interests of the subject child. I therefore, allow the application and make the following orders
 - (1) The applicants BJA and NAO are authorized to adopt the child known as NK.



- (2) Upon adoption the child will be known as NKA
- (3) The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
- (4) BAO is appointed as the legal Guardian for the child.

DATED IN NAIROBI THIS 5TH DAY OF MAY, 2023.

.....

MAUREEN A. ODERO

JUDGE

