



**In re BI (Child) (Adoption Cause E003 of 2022)
[2023] KEHC 18910 (KLR) (23 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18910 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E003 OF 2022
JRA WANANDA, J
JUNE 23, 2023
N THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY B. I (A CHILD)**

IN THE MATTER OF

BJC APPLICANT

JUDGMENT

1. The Application before this Court is the Originating Summons dated May 23, 2022 filed through Messrs Chemurgor Koskei & Co Advocates. The prayers sought are as follows:
 - i) Spent
 - ii) That the Applicant BJC be authorized to adopt BI.
 - iii) That the Registrar General shall make an entry of the adoption order herein in the adopted children register in the prescribed form.
 - iv) That the Court do issue such further orders as it may deem fit in the interest of the child.
2. The statute presently governing matters of adoption of children is the Children Act, Act No 29 of 2022 which came into effect on 6/07/2022. The said 2022 Act repealed the previous Childrens' Act, No 8 of 2001. The Application herein was filed on May 25, 2022 before the commencement of the said new 2022 Act. In the Transitional Provisions set out in the 7th Schedule of the 2022 Act, Section 6(1) thereof provides as follows:

“Subject to this Schedule, legal proceedings pending immediately before the coming into force of this Act before a court of competent jurisdiction, including proceedings against or by the State, shall not be affected by the coming into force of this Act, and may be continued.”



3. In view of the foregoing, the repeal of the 2001 *Act* does not therefore affect the validity of the Application before Court.
4. The grounds of the Application are that the minor has been living at [.....] Childrens' Home since July 2017 after being abandoned by her birth mother, during the minor's stay in the institution, no parent or relative has since turned up to claim her and neither have they received any information from the department of children or police service, since no claims have been made for the minor, the Little Angels Network adoption committee has since declared that it is satisfied that the minor is available for adoption and that it would be in the minor's/child's best interest, the minor is in dire need of care and protection and requires necessary documents to enable her fully benefit from the Applicant who is willing to educate, nurture her and provide a conducive home environment, no previous application has been made relating to the adoption of the minor, the Little Angels Network is the adoption society that has undertaken the mandate of checking the availability of the child for adoption and confirming the Applicant's suitability to adopt, the Applicant is willing to offer the minor a home and an opportunity to live a normal life in comfortable surroundings and has done so since August 31, 2021.
5. The Application is supported by the Affidavit of the Applicant sworn on May 23, 2022. Apart from the matters already alluded to in the grounds, the Applicant depones that her date of birth is 8/02/1979, she resides in [.....] Eldoret, Uasin Gishu County, she was previously married but lost her husband, she has not remarried and has no intention of to do so in the near future, she does not have any biological children of her own, she has always desired to have the opportunity to upbringing, nurture and care for a child hence the desire to adopt, she applied to the Little Angels Network indicating her desire to adopt a female minor with whom she is willing and able to provide for and love as her own, the agency was able to identify a child who had been living in the said children's home and had not been claimed since being placed to the institution, the Little Angels Network deliberated on the matter and the sitting committee was satisfied that the child is available for adoption and that it would be in the best child's interest to be adopted, the agency having been satisfied of the child's availability to be adopted issued a certificate declaring the minor free for adoption, the agency also verified the Applicant's suitability as a prospective parent, she also attended interviews and counselling sessions, she is a self-employed businesswoman with a stable income, she has rental houses which earn her money on a monthly basis, she also supplies several schools with cereals on a yearly basis, she has not received or agreed to receive and no person has made, given or agreed to make or give her any payment or reward in consideration of the adoption.
6. Attached to the Affidavit and produced as exhibit is a copy of the Report dated 5/05/2021 from the Little Angels Network conveying its satisfaction that baby BI is available for adoption. Annexed to the Report are copies of child's certificate of birth, birth hospital discharge summary, sub-county children's office Report to the Court, Court committal, admittance Form to the home, HIV test result, final police Report and a pre-placement Report.
7. Also attached to the Affidavit and produced as exhibits are copies of the Certificate from the Little Angels Network declaring the baby free for adoption, its pre-placement Report, a title deed confirming the Applicant's ownership of a parcel of land on which the rental houses are said to be situated and national identity cards for the Applicant and the two prospective Guardians ad Litem.
8. One LKC and one DJK also swore a joint Affidavit. They deponed that the said LKC being the younger brother of the Applicant is a businessman in Eldoret while his wife, the said DJK works at [.....] as a social worker, they have consented to being appointed Guardians for the child, they are aware of their duties and responsibilities and the role they would play upon being appointed as Guardians.



9. The matter then proceeded to viva voce hearing on 8/05/2023. The Applicant and the two prospective Guardians all testified under oath and confirmed the matters deponed in their respective Affidavits.
10. During the hearing, the Applicant stated that she has lived with the child for 1 ½ years and that they have bonded very well. Although it is not listed as one of her prayers in the Originating Summons, the Applicant also stated that should the Court allow the Application, then she wishes to change the child's name from BI to "BFC".
11. In the course of the viva voce hearing, I noted that the Pre-Placement Report referred to in the Applicant's Affidavit and attached as an exhibit was incomplete in the sense that some pages were missing. I therefore directed the Applicant to file a Further Affidavit exhibiting the complete Report. Pursuant thereto, the Applicant swore such Affidavit and filed it in Court on May 11, 2023.
12. As per the directions of this Court, the Applicant also filed its brief written Submissions on the same May 11, 2023.

Determination

13. The powers of the High Court to hear and determine Applications seeking adoption orders is derived from the provisions of Section 183(1) of the new Children Act 2022 (equivalent of Section 154(1) of the repealed Children 2001 Act), which provides that "subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as "adoption order", authorising an applicant to adopt a child'.
14. In any matter concerning a child the "best interest of a child" is what is of paramount importance as provided for under Article 53(2) of the Constitution and Section 8 of the Childrens Act, No. 29 of 2022 (equivalent of Section 4(3) of the repealed Children Act No 8 of 2001).
15. From the evidence on record, the Applicant has been approved as a suitable prospective adoptive parent by a competent Adoption Society duly registered by the Department of Children Services. There is also evidence that the child has been in continuous care and control of the Applicant within the Republic of Kenya for a period of 3 consecutive months preceding the filing of the Application. The Applicant has therefore met the requirement of Section 185 of the 2022 Act (equivalent of Section 157 of the repealed 2001 Act).
16. I also note that from the Applicant's National Identity Card, the Applicant is now 44 years old and from the child's Certificate of Birth, the child is now 4 years old. Insofar as the Applicant has therefore attained the age of 25 years, but is not above the age of 65 years and is more than 21 years older than the child, she has also met the threshold set under Section 186(5) of the 2022 Act (equivalent of Section 158(1)(a) of the repealed 2001 Act).
17. The Applicant can also be said to be financially stable to an acceptable standard hence possesses the means to provide and care for the baby
18. After hearing the Applicant and the prospective Guardians, and after carefully considering all the Affidavits and documents filed in support of the Application, I find the Applicant to be capable and suited to the role of effectively handling her parent responsibilities. It is this Court's view that the Applicant has met the parameters that are relevant to her assuming parental responsibility and custody of the child on a permanent basis. I am therefore satisfied that it will be in the "best interest of the child" to be adopted by the Applicant.



Final Order

19. For the said reasons, I allow the Originating Summons dated May 23, 2022 in the following terms:
- i. The Applicant, BJC is hereby authorized to adopt the child known as BI.
 - ii. LKC and DJK (the Applicant’s brother and his wife) are hereby appointed as the legal guardians of the child in the event that the Applicant dies, or is incapacitated by ill-health or by any such or similar eventuality ejusdem generis.
 - iii. The Registrar General is directed to make an entry of this Order in the Adopted Children Register and do issue a Certificate to that effect.
 - iv. Regarding the verbal prayer to change the name of the child known as “BI” to “BFC”, since a Certificate of Birth has already been issued by the Registrar of Births and Deaths or the Registrar General, as the case may be, I grant the Applicant liberty to file a post-Judgment consequential Application and serve it upon the said Registrar or any other government organ tasked with the responsibility of issuing Certificates of Birth and also the Attorney General, for their input, if any, before the Court makes an order over the said prayer.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 23RD DAY OF JUNE 2023

.....

WANANDA J.R. ANURO

JUDGE

