



**In re CK (Child) (Adoption Cause E011 of 2022)
[2023] KEHC 19721 (KLR) (Family) (19 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19721 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E011 OF 2022
MA ODERO, J
JUNE 19, 2023
N THE MATTER OF CHILDREN’S ACT NO 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY CK(THE CHILD)**

IN THE MATTER OF

CKS 1ST APPLICANT

PSO 2ND APPLICANT

JUDGMENT

1. Before this court is the Originating Summons dated February 10, 2022 by which the Applicants CKS and PSO seeks the following orders:-
 1. That CKS and PSO herein be authorized to adopt the child BABY CK.
 2. That upon the making of the adoption orders the said child be known as EIL.
 3. That the Registrar General do make the appropriate entry of EIL in the adoptive children’s register.
 4. That the child EIL be presumed to be a Kenyan citizen born in Kenya.
2. The Application was supported by the Affidavit 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 in the year 2009. They have one biological child a son who is aged eight (8) years old. The Applicants have also taken in the niece of the 2nd Applicant whom they are raising as their own child.



4. The Applicants now wish to adopt the subject child who is a six (6) year old girl. They are motivated by a desire to provide a needy child with a home.
5. The Applicants confirm that they understand the legal implications of an adoption order. They undertake to provide the subject child with all rights to a biological child including the right to inherit.

Analysis and Determination

6. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
7. 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.”
8. The subject child is believed to have been born on 1st June 2016. She is now aged Seven (7) years old and is above the Six (6) week age limit provided for in law.
9. Child Welfare Society Of Kenya (CWSK) which is a registered adoption Society have annexed to their report the original copy of their certificate Serial Number xxxx dated January 23, 2018 declaring the child Free For Adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
10. 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. Copies of their National Identity Cards are annexed to the summons [Annexures ‘CKS-(a) and (b)’].
11. The Applicants are a couple who got married to each other on August 29, 2009 in Eldoret. A copy of their Marriage Certificate Serial Number xxxx is annexed to the summons [Annexures ‘CKS-2’].
12. Their union has been blessed with one child a son who is aged eight (8) years. The Applicants also live with the Niece of the 2nd Applicant whom they have taken into their home as their own child.
13. The Applicants now wish to adopt the subject child being motivated by a desire to provide a needy child with a home.
14. The Applicants are both in gainful employment. The 1st Applicant works as an IT Manager with [particulars Withheld] Limited whilst the 2nd Applicant works as an Office Administrator with [particulars Withheld] Industries. The Applicants have annexed copies of their payslips as evidence of employment and their earning. Together they earn an income of approximately Kshs 250,000 which is sufficient to enable them provide for the needs of the child.
15. The Applicants are both Christians and intend to raise the child in the Christian faith. They were both examined by a Doctor and were found to be mentally and physically fit.
16. The Applicants have annexed to the summons copies of Clearance Certificates issued to them by the Directorate of Criminal Investigations as proof that neither has a criminal record.
17. The Applicants state that their respective families are aware of and support their intention to adopt the subject child. They have appointed the 2nd Applicant’s brother as the legal guardian for the child. The proposed legal Guardian JOW has signed a consent dated May 2, 2023.



18. All in all I am satisfied that the Applicants are suitable adoptive parents.
19. The subject child is believed to have been born on 1st June 2016. The child was found abandoned on August 14, 2016 at the Majengo Trading Centre in Vihiga County. The baby was rescued and was immediately taken to the Vihiga County Referral Hospital for a medical check-up.
20. The abandonment was reported at Vihiga Police Station *vide* OB Number 27 of August 14, 2016. Thereafter the Kakamega Children’s Court committed the child to Springs of Life Children’s Home for Care and Protection on January 30, 2018, the child was released into the custody of the Applicants under a Forster Care Agreement.
21. Article 14 (4) of the Constitution of Kenya 2010 provides that: -
 - (4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by Birth.”
22. Efforts to trace the biological mother of the child have born no fruit. Todate no persons has come forward to claim the child. A final Police letter dated June 21, 2021 is annexed to the summons. There is also a letter dated July 30, 2021 written by the Assistant Chief of Ikumba Sub-location, Vihiga County confirms that the child’s biological mother was never traced.
23. CWSK also made attempts to trace the child’s biological parents by placing adverts in the Daily Newspapers on three (3) different occasions but still nobody came forward to claim the child.
24. 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)
25. This is a child who was abandoned shortly after her birth. She 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 loving and stable home environment.
26. This child has lived with the Applicants in their home since January 2018 – a period of over five (5) years. She has bonded with the Applicants. This is the only family the child knows.
27. I was able to see the child online. She was a healthy happy young girl who was comfortable sitting between the Applicants. The child was carefree and was entertaining herself by making faces at the camera.
28. A Home visit was conducted by the Children’s Department. The Applicants reside in a three bed-roomed apartment in Kikuyu. The home is within a secure compound of several apartments and close to social amenities like schools, hospitals shopping malls etc. The environment was found to be conducive for raising young children.
29. 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.
30. Finally, I find that this adoption serves the best interests of the subject child. I allow the application and make the following orders:-



- 1) The Applicants CKS and PSO are authorized to adopt the child known as BABY CK.
- 2) Upon adoption the child will be known as EIL.
- 3) The child is presumed to be a Kenyan Citizen by birth and is entitled to all the rights and privileges thereto.
- 4) The Registrar-General is directed to make the relevant entry in the adopted children's Register.
- 5) JOW is appointed as the legal guardian for the child.

DATED IN NAIROBI THIS 19TH DAY OF JUNE 2023.

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MAUREEN A. ODERO

JUDGE

