



In re DA alias Abandoned Baby Girl DA Abandoned Unknown Infant (The Child) (Adoption Cause E007 of 2023) [2023] KEHC 20220 (KLR) (Family) (15 June 2023) (Judgment)

Neutral citation: [2023] KEHC 20220 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

ADOPTION CAUSE E007 OF 2023

PM NYAUNDI, J

JUNE 15, 2023

IN THE MATTER OF

**EAO 1ST APPLICANT
GT 2ND APPLICANT**

JUDGMENT

1. The Applicants EAO And GT, vide Originating Summons dated January 17, 2023 have made an application for the adoption of Baby DA Alias Abandoned Baby Girl DA Alias AUI the minor herein. The Applicants have been married since September 5, 2015 and have attached a copy of the marriage certificate serial number XXXX. They wish to adopt the baby so as to expand their family. They do not have children of their own. The 1st applicant is a Lawyer and the 2nd applicant works as a water and Sanitation Engineer with UNICEF. They live at Karen [particulars withheld]. They aver that they have the means to provide for the Child's basic needs.
2. The Child was found abandoned on June 26, 2021 at a garbage site in [particulars withheld] Nairobi County. She was found by the street children who reported to the social worker who later reported the incident to Kawangware police station and the child was handed over to a child Protection Volunteer from Dagoretti Sub-County Children's Office. The matter was later reported to Muthangari Police Station and entered in their records vide OB No XXXX2021. the child was temporarily placed at Angel Center for Abandoned Children. the child was committed to Angel Center for Abandoned Children by the Nairobi Children's Court vide P&C Case No. XXXX of 2022.
3. Prior to the hearing of the adoption application, Change Trust Adoption Society, undertook a social inquiry and Home Study and prepared a report dated May 7, 2021. In the report, they found the Applicants to be suitable parents and issues a certificate serial number XXXX declaring the child free for adoption.



4. Lizzie M. Agald a representative from Change Trust Adoption Society confirmed that they placed the child with the applicant and after visiting they are satisfied that the two have bonded well and the minor is well integrated into the family of the Applicant. She presented reports dated May 7, 2021 confirming that the Child is available for adoption and the suitability of the parents to adopt the child.
5. The Court appointed a Guardian Ad litem GNW who filed a report dated March 17, 2023, wherein she confirms that she has visited and investigated the applicants and recommends the Couple to adopt the child
6. An officer of the Department of Children Services, Ruth Boke Gikaro conducted home visits and prepared a report dated May 16, 2023. The report established that the child was found abandoned and has not been claimed by any known relative. That the Couple has the means to cater to the Child's needs. That the child was placed with the Applicants for bonding on August 17, 2022 and has bonded well within the family. The report finds that the applicant meets the legal requirements under the *Children Act*, 2022, and recommends that she be allowed to adopt the child.
7. The proposed Legal Guardian SVO the sister of the 1st applicant also attended court and confirmed that she is willing to take up the role of legal guardian.
8. 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.
8. The Applicants are aged 44 years and 43 Years respectively.
9. 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
10. 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;

11. 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 Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated January 17, 2023 and order as follows:
- i. The Applicants EAO and GT be allowed to adopt Baby DA Alias Abandoned Baby Girl DA Alias AUI.
 - ii. The Child to be known as DeOT.
 - iii. The minor's date of Birth is June 26, 2021 and the place of birth is Nairobi County.
 - iv. Sandra Viola Onyango 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
 - vi. The Director Immigration is authorized to issue the child with a Kenyan passport.
 - vii. The child be presumed a Kenyan citizen by birth.
 - viii. The Guardian Ad Litem is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 15TH DAY OF JUNE, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Karani Court Assistant

