



REPUBLIC OF KENYA



**In re BN (Child) (Adoption Cause E059 of 2023)  
[2023] KEHC 20417 (KLR) (Family) (14 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20417 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE E059 OF 2023  
MA ODERO, J  
JULY 14, 2023  
IN THE MATTER OF CHILDREN'S ACT NO 8 OF 2001  
AND  
IN THE MATTER OF ADOPTION OF BABY BN (THE CHILD)**

**IN THE MATTER OF**

**JKT ..... 1<sup>ST</sup> APPLICANT  
JJK ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this court is the originating summons dated April 5, 2023 by which the applicants JKT and JJK seeks the following orders:-
  - “1. That the Applicants be authorized to adopt Baby BN a child who is to be known as JCK and the Registrar General be directed to enter this adoption into the register of Adoptions.
  2. That SKT and CJO be appointed as the legal guardian of the minor who shall be presumed to have been 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 to each other in December 2011. The couple have no biological child of their own but they do have an adopted daughter aged six (6) years old. The applicants now seeks to adopt the subject child in order to expand their family.



4. The applicants both confirm that they do understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to a 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 is believed to have been born on September 12, 2021. The child is now aged two and a half (2½) years old and is above the six (6) weeks age limit provided for in law.
8. Buckner Kenya Adoption Services which is a registered adoption Society have annexed to their report the original copy of their certificate serial Number 0619 dated September 20, 2023 declaring the child Free For Adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
9. 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 at Pages 1-2 of the summons.
10. As stated earlier the applicants are a couple who solemnized their union in Eldoret on December 16, 2011. A copy of their Marriage Certificate serial Number xxxxxx appears at Page 3 of the summons. The applicants have no child of their own but have an adopted daughter aged six (6) years old.
11. The applicants are both in gainful employment. The 1<sup>st</sup> applicant runs a business whilst the 2<sup>nd</sup> applicant is an employee of the Kenya Wildlife Services. Annexed at Pages 38-40 of the summons are copies of the 2<sup>nd</sup> applicants payslip. The couple have also annexed at Pages 29-37 copies of a bank statement for an account held with Co-operative Bank Kitale Branch.
12. The applicants jointly realise a monthly income of approximately Kshs.200,000 which is sufficient to enable them provide for the needs of the child. I am satisfied that the applicants are financially secure.
13. The applicants are both Christians and intend to realise the child in the Christian faith. Annexed at page 28 of the summons is a copy of a letter of recommendation written by the Pastor of [Particulars withheld] Church where the two worship.
14. The applicants were both examined medically and were found to be both mentally and physically fit. They have annexed at Pages 41-42 copies of clearance certificates issued by the Director of Criminal Investigations confirming that neither has a criminal record.
15. The Applicants told the court that their extended families are aware of and support their intention to adopt the subject child. They have appointed the brother and sister-in-law of the 1<sup>st</sup> Applicant as the legal guardians for the child. The proposed legal guardians SKT and CJO have both written a letter



- dated April 20, 2021 and have also signed consent of the same date indicating their willingness to be appointed as the legal guardians for the child.
16. All in all I am satisfied that the applicants are suitable adoptive parents.
  17. The subject child is believed to have been born on September 12, 2021. The child was found abandoned on December 12, 2021 by the roadside in the Budalangi area of Githurai 44 in Nairobi. A good Samaritan rescued the baby and reported the matter at Kiamumbi Police Station vide OB Number xx of December 12, 2021.
  18. The child was then taken to Kiambu level 5 Hospital for medical treatment. On January 19, 2022 the Kiambu Children’s Court committed the child to Limuru Children’s Centre for care and Protection. On November 17, 2022 the child was released in to the custody of the Applicants under a Foster Care Agreement.
  19. 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.”
  20. This is a child who was abandoned at the age of three (3) months in Githurai area of Nairobi County within the Republic of Kenya. She is therefore presumed to be a citizen of Kenya by birth.
  21. Efforts to trace the child’s biological mother have not been successful. To date no person has come forward to claim the child. A final Police letter dated March 23, 2023 is annexed at Page 49 of the summons.
  22. Given the fact of her abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for the consent in line with section 187 (1) (a) of the *Children Act* 2023.
  23. 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]
  24. This is a child who was abandoned as a baby. She faced an uncertain future living in Children’s Homes. This adoption allows the child the opportunity to be raised in a loving and stable home environment.
  25. The child has lived with the applicants for over to six (6) months and she has bonded with the family whom the child now views as her own. I was able to see the child online she was a healthy cheerful toddler who kept calling out ‘Mama’ referring to the 2<sup>nd</sup> applicant.
  26. A Home visit was conducted on June 6, 2023. The couple live at the KWS quarters in Nairobi. The apartment was found to be safe and the environment suitable for raising a young child. The applicants also own a home in Eldoret.



27. I have perused the reports prepared by the Adoption Agency the Guardian Ad litem and the Director Children's Services. All three reports were favourable and recommended the adoption.
28. Finally, I find that this adoption serves the best interests of the subject child. The Application is allowed and this court makes the following orders:-
- (1) The Applicants JKT and JJK are authorized to adopt the child known as Baby BN.
  - (2) Upon adoption the child will be known as JCK.
  - (3) The child is presumed to be a citizen of Kenya birth and is entitled to all rights and privileges thereto.
  - (4) SKT and CJO are appointed as the legal guardians for the child.

**DATED IN NAIROBI THIS 14<sup>TH</sup> DAY OF JULY, 2023.**

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**MAUREEN A. ODERO**  
**JUDGE**

