



**In re Baby CA (Adoption Cause E099 of 2023)
[2024] KEHC 14123 (KLR) (Family) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14123 (KLR)

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

FAMILY

ADOPTION CAUSE E099 OF 2023

BK NJOROGE, J

NOVEMBER 14, 2024

IN THE MATTER OF BABY CA

IN THE MATTER OF

VOL 1ST APPLICANT

PM 2ND APPLICANT

JUDGMENT

1. This Judgment is in respect of an Adoption application by the joint Applicants. It is by way of an Originating Summons dated 30th May, 2023. It is supported by a joint Statement dated 30th May, 2023. There is also a joint Affidavit of the Applicants sworn on 30th May, 2023. The Joint Applicants seek for the following orders.
 - a. That the Applicants, be authorised to adopt BABY CA an infant who is to be known as NDT and the Registrar General be directed to enter this adoption into the register of Adoptions.
 - b. That VMK and JKM be appointed as the legal guardian of the minor who shall be presumed to have been born in Kenya.
2. The Originating Summon is presented to Court Pursuant to Sections 183, 184, 185, 186, 187, 188, 194, 195, 201, of the *Children Act* 2022 Laws of Kenya.
3. The Joint Applicants are Kenyan Citizens. They were married on 6th October, 2012 at the F.I.C Ngong Road in Nairobi. They are in a monogamous relationship. The joint Applicants are 49 years old. The 1st Applicant is a Chef working for Fregates in Seychelles. The 2nd Applicant is a Banker working for ABSA Bank in Nairobi. They both profess the Christian faith. They intend to raise the child as a Christian based on their faith and values. They reside in their own house at Syokimau in Athi River.



4. The Applicants do not have any children out of their union. They desire to complete their family by raising a child through this adoption process.
5. A Guardian Ad Litem's Report dated 28th September, 2023 has been filed. This is pursuant to Section 188 (2) (b) of the *Children Act* cap 141 of the Laws of Kenya. The Guardian PMS was approved vide an order made on 9th August, 2023 before the Court.
6. The Director of Children's Services has also filed a report dated 11th October, 2023.
7. The Joint Applicants appeared in Court virtually on 11th July, 2024. The Court was able to watch the close family bond that they have formed with the child the subject of this adoption. The Court listened to their evidence and their motivation to get and raise a child, by way of adoption. They wish to extend their love to a child as well as expand their family. They are willing to share their resources with another person. They are ready to provide a home to the child. The Joint Applicants have the necessary financial resources to take care of the child. The Court has no doubt as to their motivation to adopt. An adoption order will benefit the child and will be for her best interests.
8. The Court also heard Lizzie Mbogo Agala a representative of the Change Trust an adoption society. She confirmed that the case committee of the Adoption Society in its sitting of 15th July, 2022, declared the child free for Adoption. A Certificate Declaring a Child Free for Adoption No. 00530 was issued on 19th July, 2022. The Certificate is a mandatory Requirement of the law as per Section 184 (1) (b) of the *Children Act* cap 141 of the Laws of Kenya. The Adoption Society supports the adoption.
9. The Court has noted the Reports filed by the Guardian Ad Litem and the Director of Children Services. They are filed without any reservations to the adoption process.
10. The Joint Applicants have also made provisions for the appointment of the Child's Legal Guardians. This is in the case of unforeseen circumstances or their incapacity. They have proposed VMK a clansman to the 1st Applicant. They have also proposed JKM. VMK appeared before the Court virtually. He confirmed his consent. JKM did not appear in Court. The Court notes that she signed a consent to act as a Legal Guardian on 3rd May, 2023. The same was filed in Court. The proposal for appointment of a Legal Guardian is in line with Section 195 of the *Children Act* cap 141 of the Laws of Kenya. Equally this proposal serves in the best interests of the child.
11. The Court has noted that the child the subject matter of this adoption was found abandoned at Gatina area of Kawangware, abandoned by the roadside. The baby was rescued by one VW and taken to Muteithania Nursing Home where the umbilical cord was cut. Later the Baby was taken to Muthangari Police Station where a report was formally made vide OB NO. 05/10/07/2021. The baby was rescued on 10th July, 2021. The umbilical cord was said to be very fresh as evidence of a very recent birth. It is therefore presumed that the baby was born within the Gatina area of Kawangware within the County of Nairobi on 10th July 2022. The baby was taken to Angel Centre for Abandoned Children at Waithaka for care and accommodation. The baby was formally committed into the Angel Centre for Abandoned Children through the Children's Court At Nairobi MCP&CCO E326 OF 2022 on 15th July, 2022. The Court has noted that a Report was made to the Muthangari Police Station vide OB NO. 05/10/07/2021. The Court has seen the letters from Muthangari Police Station dated 10th July, 2021 and 9th February, 2022. In the circumstances the Court is satisfied that the child was found abandoned and the natural parent(s) cannot be found. The consent of the natural parents as required by Section 187 (1) of the *Children Act* cap 141 of the laws of Kenya is dispensed with, pursuant to Section 186 (8) (a) of the *Children Act* cap 141 of the laws of Kenya.



12. The Joint Applicants received the child into the care on 22nd August 2022. The Child has been living with the Joint Applicants ever since.
13. The Joint Applicant's do not have any criminal records. They have obtained Certificates of Good Conduct No. PCC-DETQZWPW dated 4th November 2023 and PCC-OLT9VYAA dated 24th August, 2021 respectively.
14. The Child was found abandoned on 10th July, 2022. The initial Police report confirms this date. Her assessed date of birth is given as 10th July, 2022. It is only just and proper that the date of 10th July, 2022 be maintained as the birth date of the child. This will henceforth be her birth date in absence of a birth notification card, or any other birth records. Her place of birth will be Nairobi.
15. There is also issue of the child's nationality. The child was found abandoned in Gatina Area of Kawangware which is within the County of Nairobi in the Republic of Kenya. Article No 14 (4) of the Constitution of Kenya states as follows;
 - “(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.”
16. The Child has a right to Citizenship. The Constitution confers the right of Kenya Citizenship, to a child found abandoned within the Kenyan territory.
17. The Court has considered the application before it in its entirety.
18. The Court has also heard all the parties who appeared before it. All the Reports filed and presented support the adoption.
19. The Court finds that it is in the best interests of the child that she gets a stable home where she will be loved, nurtured and allowed to grow to her full potential. In turn she will contribute to the growth of this great Nation as a great citizen of this Country.
20. The Court notes that the Joint Applicants have a strong desire to provide a home to the child. They wish to expand their family. They have thought about their decision and demonstrate a strong desire to adopt this child.

Determination

21. The Court grants the prayers sought the Originating Summons dated 5th March, 2024 in the following terms;
 - a. That the Applicants, be authorised to adopt Baby CA an infant who is to be known as NDT.
 - b. That VMK and JKM be appointed as the legal guardian of the minor, in the event that the Applicants herein are incapacitated or in any way unable to discharge their parental obligations.
 - c. That the child's date and place of birth be declared to be 10th July, 2022 at Nairobi County.
 - d. That the child be presumed to be a Kenyan Citizen by birth; and consequently, be entitled to all the rights and benefits in respect thereof.
 - e. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register.



f. That the guardian ad litem be discharged.

22. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER, 2024.

NJOROGE BENJAMIN. K

JUDGE

In the presence of: -

.....for the Applicants

Court Assistant.....

