



**In re Baby AKH (The Child) (Adoption Cause E022 of 2024)
[2025] KEHC 1095 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E022 OF 2024
G MUTAI, J
FEBRUARY 28, 2025
IN THE MATTER OF THE CHILDREN ACT, 2022
AND
IN THE MATTER OF BABY AKH
(THE CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS OF
ADOPTION OF BABY AKH (THE CHILD) BY MR PKN & WKM
(THE JOINT APPLICANTS)**

BETWEEN

PKN 1ST APPLICANT

WKM 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The joint applicants herein moved this honourable court vide Originating Summons dated 14th October 2024 seeking orders that:-
 - a. Pursuant to article 14(4) of the *Constitution of Kenya* 2010 and Section 7(1) of the *Children Act*, 2022, this honourable court be pleased to declare the child, Baby AKH, a Kenyan citizen by birth;



- b. Pursuant to the provisions of Section 187 of the *Children Act, 2022*, this honourable court be pleased to dispense with the requirements of the consent to adoption as required by the provisions of Section 186 of the *Children Act, 2022*;
 - c. The applicants, PKN and WKM, be authorized to adopt Baby AKH;
 - d. Upon making of the adoption order, the child to be known as AKH;
 - e. Upon the making the adoption order, AKN and DKM be appointed the legal guardians of the child as provided for by the provisions of Section 195 of the *Children Act, 2022*;
 - f. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption order and the date of birth of the child as 8th June 2017 in the Adopted Children Register as provided for by Section 201 of the *Children Act, 2022*; and
 - g. The costs of this application be costs in the cause.
2. The application is supported by the averments in the statement in support thereof sworn on 14th October 2024. The applicants are Kenyan citizens born in 1979 and 1982, respectively. They married each other on 16th February 2013 at [particulars withheld]. They have not been blessed with their own biological children. The motivation to adopt the baby has been ignited by the desire to have parental responsibility over the child, who has been part of their lives since November 2022. They would like to adopt him as opposed to a guardianship order, which has a limitation on age. Regarding their occupation, the 1st applicant is a prison officer, while the 2nd applicant is a nurse working at [particulars withheld] Sub-County Hospital.
 3. The child herein is estimated to have been born on 8th June 2017 to FNN, who gave her up for adoption on the grounds that she was financially incapable of taking care of the baby. Ms F willingly surrendered the child for placement and gave her final consent on 6th June 2024. She also disclosed that she was not aware of the biological father's identity as the child was conceived during a period of depression and under alcohol influence, and no man has come forward to claim paternity of the child. The child is a niece to the applicants, thus making this adoption a kinship adoption.
 4. In its meeting held on 3rd July 2024, the case committee of Little Angels Network declared the child free for adoption and issued a Certificate Serial No.00XXX3.
 5. Upon instituting these proceedings, DCT was, on 28th November 2024, appointed the guardian ad litem. The Children's Officer and guardian ad litem were directed to file their respective social inquiry reports within 30 days of the said date.
 6. Preceding the hearing, the County Coordinator for Children Services, Mombasa County, filed his report dated 17th December 2024, recommending the adoption. Similarly, the guardian ad litem filed her report dated 13th January 2025 recommending the adoption.
 7. During the hearing, the applicants urged the court to allow the application so that they could adopt the child and stated that they understood the consequences of adoption, which are permanent.
 8. The Directorate of Children Services Mombasa, the Little Angels Network, and the guardian ad litem recommended the application through the testimonies of Ms KNM, Ms EK, and Ms T, respectively.
 9. I have considered the application herein, materials in support, and evidence by various witnesses. The issues that emerge for determination are whether the baby is available for adoption, whether the applicant is fit to adopt the baby, and most importantly, whether the adoption is in the best interest of the child.



10. The subject baby is estimated to have been born on 8th June 2017 to FNN, who gave her up for adoption on the grounds that she was financially incapable of taking care of the baby.
11. The identity of the child's father is unknown. The birth mother said that she was conceived at the time she was suffering from depression.
12. On the baby's nationality, it is clear the baby was born in Consolata Maternity and Nursing Hospital and is currently staying with the applicants at Shanzu, Shimo La Tewa, Kilifi County, all within the Republic of Kenya. Article 14(1) of the Constitution of Kenya, 2010 provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen. The child herein was born in Kenya, and his mother is Kenyan; thus, in view of this provision, the child herein is presumed to be a Kenyan citizen by birth.
13. The child is above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to Section 184(1) (b) of The Children's Act 2022. Further, Section 185(1) does recognize any child who is resident in Kenya, whether born in Kenya or not, to be eligible for adoption. I have no doubt that the child is fit for adoption.
14. Concerning the applicants' suitability, they are Kenyan citizens, thus qualifying this as local adoption. The 1st applicant is 46 years old, while the 2nd applicant is 43 years old, which places them in the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with Section 186(2) (a) of the Children's Act. The applicants have been described as financially stable as the 1st applicant is a prison officer, and the 2nd applicant is a nurse with various assets, as indicated in the Director of Children Services Report. They are caring, loving and Christian with no criminal record. Since the placement of the minor into their custody, the child has fully bonded. They also understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and admit they will treat the baby like their biological child. It's my view that the applicants have met the necessary requirements to adopt the baby.
15. On the question of whether the adoption is in the best interests of the baby, guidance is drawn from Article 53(2) of the Constitution and sections 8(1) and (2) of the Children's Act 2022, which underscores the best interests of a child as the primary consideration before making any decision concerning a baby.
16. I Am also guided by the decision of Nyakundi, J in the case of In re B (Baby) [2018] KEHC 6114 (KLR), where he stated that:-

“The purpose of Kenya's Constitution and Children's Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern, therefore, in every adoption cause provision is in the best interest of that very child.

That law presumes that by granting foster care the adoptive parties will provide and promote a stable, supportive and nurturing environment for the child. From the reports filed by the Director Children Services and Kenya Children's Homes adoption agency both applicants are in good health, have fulfilled the condition's precedent set out under section 158 of the Children's Act.

It is also not in dispute that they both have a steady income and a home where they live together. During the pendency of these proceedings both applicants have had the opportunity to bond with the child since her placement in their custody.



It is that family unit that the *Constitution* contemplates under Article 45 which also has to take responsibilities in fulfilling the obligations enjoined in Article 53 of the same *constitution*.”

17. The child herein was willingly surrendered for adoption by her mother, F. Like any other child, the baby needs parental care and guidance. She needs basic necessities like food, shelter, education, and clothing. She has fully integrated with the applicants. It is obviously in the best interests of the child that this adoption application be allowed.
18. In my view, the application has merit. Consequently, the same is allowed.
 1. I declare the child, Baby AKH, a Kenyan citizen by birth;
 2. The consent of the biological father is dispensed with as his identity is unknown;
 3. The Joint Applicants, PKN and WKM are hereby authorised to adopt Baby AKH;
 4. Baby AKH shall henceforth be known as AKH;
 5. I appoint AKN and DKM as the Legal Guardian of AKH and entrust them with the responsibility of taking care of the child in the event the Joint Applicants become deceased or are otherwise permanently unable to take care of her before she attains the age of majority;
 6. The Register General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of AKH as being 8th June 2017 in the Adopted Children Register as provided for by section 201 of the *Children Act*, 2022; and
 7. The guardian ad litem, DCT, is hereby discharged.
19. I make no orders regarding costs as this is a non-contentious adoption cause.
20. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 28TH DAY OF FEBRUARY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Ms Ngugi, for the Joint Applicant;

Arthur – Court Assistant.

