



**In re CAB (Minor) (Adoption Cause E003 of 2025)
[2025] KEHC 8519 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 8519 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E003 OF 2025**

G MUTAI, J

MARCH 28, 2025

IN THE MATTER OF THE CHILDREN’S ACT, 2022

AND

IN THE MATTER OF CAB (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF CAB (MINOR)

BETWEEN

LOO 1ST APPLICANT

MAH 2ND APPLICANT

AND

KENYA CHILDREN’S HOME ADOPTION SOCIETY RESPONDENT

JUDGMENT

1. Before me is an Originating Summons dated 7th February 2025 vide which the joint applicants seek the following orders:-
 1. That Leonid Omondi Olila and Margaret Akinyi Halowe be authorized to adopt CAB (Minor), the minor child;
 2. That the child CAB (Minor) is a Kenyan citizen;
 3. That the name of CAB be changed to CAOH;
 4. That the Registrar General be directed to enter the name of the child in the adopted child registrar in the prescribed form and to issue a certificate to that effect;



5. That YAH and JCC be appointed as Legal Guardians;
 6. That the honourable Court be pleased to make any other orders it deems fit and appropriate; and
 7. That the cost of this Summons be in the cause.
2. In the affidavit of the joint applicants sworn on 7th February 2025 and the statement in support of the application for adoption dated 7th February 2025 the joint applicants averred that they are married to each other. They married on 6th October 2018 at ACK St. Paul's Church, [particulars withheld], Mombasa. They do not have their own biological children. They are Kenyan citizens of sound mind who profess the Christian faith. The joint applicants reside Ratna area of Bamburi, Mombasa.
 3. The child, on the other hand, was born to the late AAO. Her father, PWB, died on 22nd June 2022 at the Coast General Hospital. AAO died on 26th March 2014. Upon the demise of her parents, the minor was placed in the custody of her aunt, MAH (2nd applicant), and her husband, LOO (1st Applicant). According to the document filed in court, the family of the deceased biological mother of the child agreed that she should be adopted by the joint applicants.
 4. The proposed adoption was considered by the Kenya Children's Home Adoption Society's Case Committee on its sitting on 22nd January 2025. The Case Committee approved the adoption vide Certificate Declaring the Child Free for Adoption Serial No XXXX.
 5. On 19th February 2025, this Court heard the Chamber Summons application dated 7th February 2025. Being satisfied that the proposed guardian *ad litem* was a suitable person to be appointed, MAO was so appointed. I directed her to file the requisite report within 30 days of the said date. The Court also ordered the Directorate of Children Services to conduct a social enquiry on the suitability of the proposed adoptive parents to adopt the child and to file the requisite report within a similar period of time.
 6. On 12th March 2025, the Originating Summons was heard. I will set out the evidence of the witnesses below.
 7. The 1st witness was MM. Ms M works for the Kenya Children's Home Adoption Society. She testified that her Organization carried out investigations on the joint applicants regarding their suitability to adopt the child and filed a report dated 10th February 2025. She testified that the child was freed for adoption vide a certificate with Serial Number XXXX dated 22nd January 2025.
 8. The second witness was Ms FR. Ms R works for the Directorate of Children's Services Mombasa at the Sub County Office at Kisauni. She testified that she visited the joint applicants at their home in Kisauni on 7th March 2025. She found the home to be suitable. She produced the report of the Directorate in which adoption was recommended.
 9. The first applicant was the third witness. The said applicant resides in Stafford, Virginia, In the United States of America. It was his testimony that the child was his niece. He testified that he understood that adoption was permanent. He further testified that the child had been under his and his wife's care and control since her parents died. It was his evidence that they wished to adopt her so that the child's future would be secured.
 10. The guardian *ad litem* was the fourth witness. It was her evidence that she lives in Bamburi and that she is a pastor and a businesswoman. She further testified that she visited the joint applicants and wrote a report. She recommended the adoption by the joint applicants.



11. The last witness was MAH, the second applicant. She lives at Ratna at Bamburi, Mombasa and does clearing and forwarding. She testified that Leonid is her husband, and together, they wish to adopt Carren as they had been taking care of her since her parents died. Like Leonid she too stated that she knew what effect adoption would have. She also said they would explain to Carren what adoption was, gradually as she grew up.
12. The Court had the opportunity to interview Miss C. She was erudite and knew what was going on. She consented unequivocally to the adoption.
13. I have considered the application herein, materials in support, and evidence by various witnesses. The issues that emerge for determination are whether the child 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.
14. From the evidence adduced, it is clear that the child was born on 20th March 2014. She is the daughter of the deceased sister of the second applicant. The father of the child is also dead. Since the demise of both her parents, the child has lived with the joint applicants. The proposed adoption enjoys the support of the extended family.
15. Since both her parents are deceased, there is no one to give consent for her adoption. In the circumstances, I dispense with the requirement for consent of the biological parents to the adoption.
16. The child is the biological daughter of the late AAO and the late PWB. 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 was born in Kenya, and her mother and father are Kenyans; thus, in view of this provision, the child herein is presumed to be a Kenyan citizen by birth.
17. 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) recognizes any child who is a resident of Kenya, whether born in Kenya or not, as eligible for adoption. I have no doubt that the child is fit for adoption.
18. Concerning the applicants' suitability, they are Kenyan citizens, thus qualifying this as local adoption. The 1st applicant is 43 years old, while the 2nd applicant is 38 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 joint applicants have been described as financially stable, as indicated in the Director of Children Services Report. They are caring, loving, Christian, and have no criminal record. Since the placement of the minor into their custody, the child has fully bonded with them. 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.
19. On the question of whether the adoption is in the best interests of the child, 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.



20. 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*.”

21. The child herein is an orphan. Like any other child, she needs parental care and guidance. She also needs basic necessities like food, shelter, education, and clothing. She has fully integrated with the joint applicants. It is obviously in the best interests of the child that this adoption application is allowed.

22. In my view, the adoption application has merit. I therefore issue the following orders: -

1. I declare the child, CAB, a Kenyan citizen by birth;
2. The consent of the biological parents of the child to the adoption is hereby dispensed with since both parents are deceased;
3. The joint applicants, LOO and MAH, are hereby authorized to adopt CAB;
4. CAB shall henceforth be known as CAO
5. I appoint YAH and JCC as the Legal Guardians of CAO 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 Registrar General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of CAO as being 20th March 2014, in the Adopted Children’s Registrar as provided for by Section 201 of the *Children Act*, 2022; and
7. The guardian *ad litem*, MAO, is hereby discharged.

23. I make no orders regarding costs as this is a non-contingent adoption matter.

24. Orders accordingly

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

GREGORY MUTAI

JUDGE



In the presence of:-

Ms Mwashushe, for the Joint Applicants; and

Arthur - Court Assistant.

