



REPUBLIC OF KENYA



**In re Baby BS (Minor) (Adoption Cause E084 of 2023)
[2024] KEHC 3382 (KLR) (Family) (22 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3382 (KLR)

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

FAMILY

ADOPTION CAUSE E084 OF 2023

PM NYAUNDI, J

MARCH 22, 2024

**IN THE MATTER OF THE CHILDRENS ACT NO. 29 OF
2022**

AND THE CHILDREN (ADOPTION) REGULATIONS 2005

AND

IN THE MATTER OF BABY BS (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

WARMOLT TONCKENS (1 ST APPLICANT) AND BNL (2ND APPLICANT)

JUDGMENT

1. Before this Court is the Originating Summons, Statement in support of an application as well as Supporting Affidavit, Statement in Support of Application all dated 12th May, 2024 respectively by which the Applicants seeks that; -
 - i. HNM be appointed as Guardian ad litem of BS (minor herein).
 - ii. WT and BNL (the Applicants) be authorized to adopt baby BS (minor herein).
 - iii. The child be known as BST.
 - iv. The Registrar General be directed to enter this adoption into the register of Adoptions.
 - v. The minor be considered as a Kenyan Citizen.
 - vi. The Director Immigration Services do issue the child BST with a Kenyan Passport upon application.



2. The matter was canvassed by way of vive voce evidence on the virtual platform on 7th March, 2024.
3. The Applicants are husband and wife. They met in the year 2017 and celebrated their marriage in 2021. Their union has been blessed with one biological child who was born on 26th October, 2018. The 2nd Applicant had been in previous relationship with BPE, now deceased as per attached death certificate. It is said that from that relationship, the 2nd Applicant got two daughters who she currently lives with permanently and has a very close relationship with Applicants and regards both as her parents.
4. WT (1st Applicant) was born in Norg-Netherlands. Since 1996 he resides in Kenya and works as a Managing Director-[Particulars Withheld] in Tigoni. He has since applied for Kenyan citizenship but the process is yet to be completed. BNL (2nd Applicant) is a Quality Assurance Manager at [Particulars Withheld] in Tigoni.
5. It's their averment that the Applicants have also made an application to adopt another child, NA, in (Adoption Cause No E085 of 2023), who is also the biological daughter of the 2nd Applicant and the biological sister of the minor hence kinship adoption provided under Section 193 of the *Children Act* 2022 hence Kinship Adoption.
6. The child (female) who is the subject of the present adoption proceedings was born on 9th January, 2011. The minor stated via online platform in Court that she is 13 years old and in grade 7. She further stated that she lives in Limuru, Red Hill. Subsequently, she understands that she is in Court and consented to the Adoption Proceedings. The minor was born to the late BPE and BNL (2nd Applicant). The minor's father died in a motor accident. Since then the minor was left under the care of her mother (2nd Applicant who has continued to cater for the minor's needs through support of her husband (1st Applicant). The family consented that the minor be adopted by the 1st Applicant. It is at that point that the Applicants took the minor and their have been taking care of the minor together with the biological sister of the minor herein.
7. Upon an assessment and approval by Change Trust Adoption Agency, consent from the biological siblings of the Applicants and their biological child, the consent from the minor, the minor was declared free for adoption by the Change Trust Adoption Agency Vide a Certificate of Freeing Serial Number 00510 dated 28th October, 2022.
8. This Court on 20th July, 2023 issued an order appointing HNM as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to investigate and file their respective reports within 45 days.
9. Pursuant to Section 102 of the *Children Act*, before this matter came up for hearing, Assistant Director of Children's Services prepared and filed in Court a favorable report dated 23rd October, 2023 in respect of the proposed adoption of the minor by Applicants. She stated that Applicants are hardworking, loving and God fearing. Subsequently, they are physically healthy and mentally stable. Moreover, the Applicants appointed PSKH as the legal guardian to the minor in case of any eventuality. She further stated that this being a Kinship Adoption it will be in the best interest of the minor.
10. Another report in respect of the proposed adoption of the minor was prepared by Kenya Children's Home Adoption Society, and this report was similarly in favour of the proposed adoption.
11. Subsequently another Statutory Report in respect of the proposed adoption of the minor was prepared by and filed by the guardian ad litem, Hellen Nduta Kimani and this report was similarly in favour of the proposed adoption, in which she noted that the Applicants have proved capable of taking on parental responsibility over the minor here hence recommended the adoption.



12. Its evidence that the Applicants have no criminal record as per the Police Clearance Certificate Serial No.WOP-A9XXXXD and PCC-AKXXXXYE. This Court has evaluated the facts of this adoption. This is a Kinship adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
13. The consent of the Applicants siblings, the Applicants biological child, the consent of the minor herein from the report filed in Court and through viva voce evidence in Court, and the consent of the Legal Guardian was adopted by the Court. The home visits by the guardian ad litem and the Assistant Director of the Children’s Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child.
14. This Court observed the Applicants with the minor in Court and it was evident that in the period that the Applicants has had the custody of the child, the child has bonded well with them. The child was present in Court and stated that he understood the adoption proceedings and that it meant the Applicants will acquire full parental responsibilities over the minor.
15. After carefully assessing the records herein, I am satisfied that the Applicants has fulfilled all the legal requirements relating to the Child’s adoption. Section 186 of the Children Act, 2022 provides. The court may make an adoption order on application by-
 - (1)
 - (a) Sole applicant; or
 - (b) Two spouses jointly.
 - (2) The court shall not make an adoption order in any case unless-
 - i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - ii. 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.
16. This Court is alive to the Jurisdiction of the High Court vide Article 165 Constitution of Kenya 2010 and Section 183(1) Children Act 2022. The Court is conscious of the law; Article 53 Constitution of Kenya 2010, Section 8 of Children Act 2022 and the UN Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child all amplify on the best interests of the child.

Determination

17. On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants.
18. Accordingly, I allow the prayers sought in the Applicants application dated 12th May, 2023 and order as follows:
 - I. The Applicants, WT andBNL be hereby allowed to adopt BabyBS.
 - II. Henceforth, the child shall be known as BST.



- III. Her date of birth shall be 9th January, 2011 and place of Birth is Thika
- IV. She is presumed to be a citizen of Kenya by birth.
- V. PSK shall be the Legal Guardian of the child.
- VI. The Registrar to enter this order in the Adoption Children Register.
- VII. The Director Immigration to issue the child with a Kenyan Passport.
- VIII. The Guardian Ad litem is discharged.

It is so ordered.

DELIVERED DATED & SIGNED IN OPEN COURT ON 22ND MARCH, 2024.

P. NYAUNDI

JUDGE

In presence of: -

Sylvia Court Assistant

