



REPUBLIC OF KENYA



**In re GF (Minor) (Adoption Cause E117 of 2023)
[2024] KEHC 2934 (KLR) (Family) (22 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2934 (KLR)

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

FAMILY

ADOPTION CAUSE E117 OF 2023

PM NYAUNDI, J

MARCH 22, 2024

IN THE MATTER OF THE CHILDREN ACT, 2022

AND

IN THE MATTER OF BABY GF (MINOR)

BY

IN THE MATTER OF

KOO 1ST APPLICANT

MAO 2ND APPLICANT

JUDGMENT

1. MOO (1st Applicant) and NO (2nd Applicant) seek by their Originating Summons, statement and supporting affidavit dated 22nd June, 2023 to be allowed by this Court to;
 - i. Adopt Baby GF (hereafter “the child”)
 - ii. The child be called GAO
 - iii. OWI be appointed Legal Guardian of the child.
 - iv. That the Registrar-General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register.
 - v. That the child be presumed to be a Kenyan Citizen by birth.
 - vi. That the Director of Immigration be authorized to issue the child with a Kenyan Passport.
 - vii. That the Court be pleased to make any further orders it deems necessary.



2. The Applicants are husband and wife. They got married through a customary wedding in 2015 and later celebrated their marriage on 20th April, 2017 as per attached Marriage Certificate Serial Number 08XXX8 at the Registrar's Office in Nairobi.
3. The first Applicant is a Finance Officer at [Particulars Withheld] Limited while the 2nd Applicant is a business woman. They do not have children of their own.
4. Through the online platform on *viva voce* evidence, the Applicants stated that they applied for the application jointly, it's their averment that they have lived with the minor for 5 years and they have the means to provide for the child. The 1st Applicant further stated that he has another female child aged 8 years old from a previous union and she consented to the adoption proceedings. Subsequently, the Applicants wish to appoint OWI as the legal guardian of the minor in case of any eventuality.
5. The child who is the subject of the present adoption proceedings was abandoned by his mother after birth at Ray of Hope Clinic and Community Centre, Kawangware. A report on the incident was made to Muthangari Police Station on 5th October, 2016 and was recorded *vide* OB No. 18/5/10/16. On the same day, the Children's Officer was informed of the incident and managed to secure a temporary placement for the child at New Life Home Trust for care and protection.
6. The Magistrate Children's Court sitting at Nairobi, in accordance with Section 119 of the *Children Act*, committed the child to the home on 15th February, 2017 *vide* P&C No. 44/2017. The child was placed in the custody of the Applicants on 13th October, 2017 for mandatory bonding prior to adoption. He has since then been in the continuous custody and care of the Applicants. According to correspondence from relevant authorities and Ray of Hope Clinic and Community Centre, no one has come forward to claim the child since he was rescued. A report to that effect has been filed in Court. Thus, this Court dispenses with the consent of the child's biological parents to the proposed adoption of the child by the Applicants.
7. Consequently, KKPI Adoption Society, issued a certificate declaring the child free for adoption pursuant to Section 156(1) of the *Children Act*. The said freeing certificate is Serial No. 6XX and the same is dated 29th March, 2017.
8. Additional, the Applicants sought among others, orders from this Court that AAO be appointed as the child's guardian ad litem, and that the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report within 45 days. They further sought for the appointment of OWI as a Legal Guardian of the minor in the event of any eventuality who via online platform in Court averred that 1st Applicant is his brother-in law and the 2nd Applicant is her sister and therefore accept the adoption proceedings.
9. On 20th July, 2023 this Court issued an order appointing AAO as the child's guardian ad litem, and further directing the guardian ad litem, the Director of Children's Services and Adoption Society to file their respective reports in Court.
10. Pursuant to Section 156(1) of the *Children Act*, before this matter came up for hearing, KKPI, the relevant adoption society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by both Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Principal Children's Officer and this report was similarly in favour of the proposed adoption. The guardian ad litem, AAO, also filed the statutory report made under Section 188 of the *Children Act*, 2022 in which she noted that the child has bonded well with the Applicants since she has been in care for five years and the Applicants have shown parental commitment and willingness to give her a permanent, safe and loving home therefore



proposed adoption of the child by the Applicants, would be in the best interests of the child. It was also evidence in Court via online platform where the same relevant authorities consented to the adoption proceedings.

11. The Applicants are of good health and financially capable of taking care of the child. They have no criminal record as evidenced by Police Clearance certificates of the first and second Applicants of Serial Numbers PCC-AAXXXRS1 and PCC-AAXXXRB4 respectively.
12. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the joint Applicants to adopt the child. This Court has evaluated the facts of this adoption.
13. This is a Local Adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth. This Court has satisfied itself that the Applicants are qualified and able to take care of the child.
14. The home visits by the guardian ad litem, the adoption society and the 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. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them.
15. The proposed legal guardian attended Court and confirmed that she has given her consent to act as Legal Guardian.
16. The child considers the Applicants to be his parents.

Determination

17. After carefully assessing the records herein, I am satisfied that the applicant 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.
18. 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.
19. The Court has evaluated the facts of this Local Adoption from the Reports filed. It is evident that the Applicants have fulfilled all the legal requirements of a Local Adoption as required under Section 193



of the *Children's Act, 2022*. All the necessary Reports and consents required for this Adoption have been filed.

20. 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.”

21. This Court is therefore of the opinion that this Adoption would be in the best interest of the child and allows the application with Orders that;

- a. The Applicants, MOO and NO are hereby allowed to adopt baby GF.
- b. Henceforth, the child shall be known as GAO.
- c. His date of birth shall be 2nd October, 2016 and place of Birth Nairobi.
- d. He is presumed to be a citizen of Kenya by birth.
- e. OWI is hereby appointed as Legal Guardians of the child.
- f. The Registrar General to enter this order in the Adoption Children Register.
- g. The Director Immigration to issue the child with a Kenyan Passport.
- h. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 22ND DAY OF MARCH, 2024.

P. NYAUNDI

JUDGE

In the presence of:

Sylvia Court Assistant

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