



**In re IK (Child) (Adoption Cause 15 of 2018)
[2024] KEHC 7741 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7741 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
ADOPTION CAUSE 15 OF 2018
CW GITHUA, J
JUNE 28, 2024**

IN THE MATTER OF

JKK 1ST APPLICANT

PMGK 2ND APPLICANT

JUDGMENT

1. By an Originating Summons dated 21st September 2018, the applicants moved this court seeking to be allowed to adopt Baby I.K. They also prayed that if their prayer for adoption was granted, the child be known as I.K.K. and the Registrar-General be directed to register him as such in the Adopted Children’s Register; that he be presumed to be a Kenyan citizen by birth and be issued with a Kenyan passport.

A perusal of the pleadings show that the applicants are Kenyan citizens and are a married couple who reside in Gitui village within Murang’a county. They both profess the Christian faith.

2. At the time of filing their application, the first applicant was 63 years old while the 2nd applicant was 59 years old.
3. The court record shows that after filing the originating summons, they failed to take any step to prosecute the summons as a result of which on 27th March 2021 it was dismissed for want of prosecution. However, following an application by the applicants, the summons was reinstated and was fixed for hearing on 2nd May 2023.
4. During the hearing, it emerged that the child sought to be adopted had by then attained the age of majority as he was nineteen (19) years old although he was still in secondary school.

Upon studying the reports that had been filed in court by various agencies in support of the proposed adoption, I discovered that they were scanty and outdated as they did not capture the applicants current social and economic circumstances as well as their relationship with the subject of the application (hereafter referred to as the subject).



I therefore gave directions on the filing of fresh reports and affidavits by both the applicants and the subject.

5. The applicants filed a joint affidavit on 22nd September 2023 in which they deposed that after the child was declared free for adoption by the Child Welfare Society of Kenya, he was placed under their care and custody on the 16th July 2005 when he was only nine months old; that since then, they have lived with him and have raised him as their biological child since they were not blessed with children of their own. They enrolled him in both primary and secondary schools and they are ready to continue supporting him in all spheres of his life including sponsoring his education to any level he desired and meeting all his emotional, social and financial needs until he becomes self-reliant.
6. During the hearing, both applicants re-iterated the above commitment. The 1st applicant in addition urged the court to allow the application so that he can pass on his surname to the subject and enable the subject to acquire a birth certificate and an identity card.
7. The subject who introduced himself using the 1st applicant's middle and surnames in his evidence described the applicants as his father and mother and proclaimed that they are the only parents he knows having lived with them since he was a child.

He expressed his desire to be adopted by them so that they could continue supporting him and he could also help them in their old age.
8. The County Director of Children's Services also testified and urged me to grant the adoption orders sought even if the applicants were past the age of persons eligible to adopt a child and the subject is no longer a child but an adult given the special circumstances existing in this case. He argued that it was only through adoption that the suspect would be able to acquire identity documents which he needed to make progress in his life.
9. According to the material placed before the court, the subject was found abandoned at Kanjama area along Kiriaini-Kangema Road on 5th April 2014. He was taken to Muranga District Hospital for medical attention where he remained until 3rd September 2004 where he was discharged and was committed to Nyumani Children's Home for care and protection. He remained in the home unclaimed until 28th July 2014 when the Child Welfare Society of Kenya declared him free for adoption and he was subsequently placed under the foster care of the applicants.
10. After considering all the material placed before the court including the evidence tendered before me by the applicants, the subject and the County Director of Children services, I find that this case clearly elucidates the unique challenges faced in court by ordinary citizens who cannot afford legal representation when litigating on matters touching on their personal interests. It is evident that though this matter was filed when all the parameters set by the law for local adoptions had been met by the applicants, due to the fact that they were lay persons and could not afford legal representation, they did not know how to follow up on their application with the result that it was initially dismissed for want of prosecution and when it was reinstated and was ready for hearing, the subject had already become an adult and ineligible for adoption.
11. Adoption is governed by the Children's Act No.29 of 2022 which at Section 2 defines a child as an individual who has not attained the age of eighteen (18) years. Section 185 read together with Section 186 of the *Children Act* (herein after the Act) which governs local adoptions leave no doubt that adoption orders can only be made in respect of a child not an adult.
12. Section 186(2) of the Act further provides in mandatory terms that adoption orders cannot be made in cases where the applicant is below twenty-five years or above 65 years of age. The applicants in this case



are currently above the 65 years age bracket since the 1st applicant is now 69 years while the 2nd applicant has surpassed her 65th birthday by around five months as per the national identity cards annexed to their application.

13. Given the foregoing, it is clear that the applicants prayer for adoption of the subject has been overtaken by events as it is no longer legally tenable.

In the premises, I decline to grant the orders of adoption as prayed.

14. However, all is not lost because under Section 197 as read with Section 35 of the Act, the court is empowered to extend parental responsibility beyond a child's eighteenth birthday either on application by any person or on its own motion if it was satisfied that special circumstances touching on the welfare of the child existed to warrant such extension.

15. In this case, although the applicants are not the biological parents of the subject and their application for adoption has failed, it is clear from the evidence on record that they assumed parental responsibility over the subject since he was nine months old until now when he is already an adult. They have provided him with all the necessities of life including food, clothes and shelter as well as financing his education. They are the only parents that the subject knows and besides them, he does not have any one else in this world who can offer him the psychological, social and financial support he requires in order to thrive and succeed in life considering that he was abandoned at birth.

16. Under Section 31(1) of the Act, parental responsibility is defined as

“all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child.....

Under Section 31(2) the duties expected of a person having parental responsibility over a child includes the duty to determine the name of the child and to procure registration of the birth of the child. In my view, even if the applicants have not been allowed to formerly adopt the subject, nothing stops the 1st Applicant from allowing the subject the use of his surname and nothing bars both applicants from gifting him with property either in their lifetime or upon their demise through a will.

17. That said, although the subject is now an adult, it is clear that he still requires the care and support of the applicants given that he has just completed secondary education and is interested in pursuing further studies.

As indicated in the report filed by the Directorate of Children Services on 6th March 2024 the applicant is currently waiting to join Mount Kenya University.

He will therefore need the applicant's support to pay for tuition and upkeep for the period he will be pursuing college education. In the premises, I hereby endorse the applicant's parental responsibility over the subject and extend it till the time he completes his college education and or becomes self-reliant.

18. Regarding the applicant's prayer that the subject be registered as a citizen using the 1st applicant's surname, I find Article 14 of the Constitution of Kenya 2020 which deals with the right to Kenya Citizenship relevant.

Article 14(4) provides as follows:

“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.



19. There is no doubt from the documentary and oral evidence presented before me that the subject was discovered abandoned besides a road in Murang'a County when he was only a few months old. His parents are todate unknown. By virtue of Article 14(4) of the Constitution, he is presumed to be a Kenyan citizen by birth and is thus entitled to acquire Kenyan Identification documents.
20. In view of the foregoing and in the interest of dispensing substantive justice in this case, I give the following orders;
- i. That the Applicant's prayer for adoption is declined but their parental responsibility over the subject is extended until the subject completes his college education and or becomes self-reliant.
 - ii. The subject is presumed to be a Kenyan citizen by virtue of Article 14(4) of the Constitution of Kenya 2010.
 - iii. The Registrar – General is directed to issue the subject with a Kenyan identity card. His date of birth shall be 5th April 2004 and place of birth shall be Murang'a.
 - iv. The Director, State Department for Immigration & Citizen services is hereby authorized to issue the subject with a Kenyan passport.
 - v. The guardian ad litem is hereby discharged.
 - vi. This judgment to be served on the Registrar – General and The Director, State Department for Immigration & Citizen services for purposes of compliance with orders (iii) and iv) above.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 28TH DAY OF JUNE, 2024.

C.W. GITHUA

JUDGE

In the presence of:

1st and 2nd Applicants

Ms Susan Waiganjo - Court Assistant

