



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. E093 OF 2021

IN THE MATTER OF CHILDREN ACT (ACT NO. 8) OF 2001

AND

IN THE MATTER OF ADOPTION OF RAA (MINOR)

AND

BNA.....1ST APPLICANT

BNM.....2ND APPLICANT

JUDGMENT

1. Before the Court is the originating summons dated **5th August 2021** in which the Applicants seek the following orders:-

“1. THAT the Applicants be authorized to adopt RAA and the Registrar General be directed to enter this adoption into the register of adoptions.

2. THAT AA and MBN be appointed as the legal guardian of the minor.

3. THAT the child be presumed to have been born in Kenya.

2. The application was supported by the statement of even date made by the 1st Applicant. The matter was canvassed by way of oral evidence on the online platform.

3. The Applicants are a couple who got married to each other in **October 2005**. Their union has been blessed with one child, a daughter who was born on **15th April 2015**.

4. Prior to the birth of their biological child the Applicants had taken into their home a cousin of the 1st Applicant (the Subject child) who was at the time aged **three (3)** years old. They have lived with the minor and raised her as their own child for the past **thirteen (13)** years. The Applicants now wish to adopt the minor in order to formalize their relationship.

5. Both Applicants confirmed to the court that they fully understood the legal implications of an adoption order. They both undertook to accord to the child all the rights due to a biological child including the right to inherit.

6. The prerequisites for an adoption order are set out in **section 156(1) of the Children's Act 2001** which provides as follows: -

“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”

7. The subject child **RAA** was born in the **Tana River District** on **6th August 2005**. A copy of the Childs birth certificate Serial Number [Particulars Withheld] is annexed to the summons. The child is therefore now aged about **15 ½ years** old well above the age limit provided for in law.

8. **Little Angels Network** which is registered Adoption Agency have annexed to the summons the original copy of their certificate Serial Number **00xxxx** declaring the child Free For Adoption. I am satisfied that the legal prerequisites for adoption have been met.

9. The duty of this court is to analyze the evidence on record to determine whether the Applicants are suitable Adoptive parents. The Applicants are both Kenyan citizens. They have annexed to the summons copies of their National Identify Cards.

10. As stated earlier they are a married couple. They have annexed to the summons a copy of their marriage certificate indicating that their marriage was solemnized in accordance with Islamic Law on **8th October 2005**. This is the second marriage for the 2nd Applicant and a first marriage for the 1st Applicant. The Applicants union has been blessed with a daughter born to them in **Mombasa** on **15th April 2015**. A copy of the Childs birth certificate Serial Number [Particulars Withheld] has been annexed to the summons.

11. The Applicants are both gainfully employed. The 2nd Applicants is a businessman who runs a **Clearing and Forwarding firm** whilst the 1st Applicant is a nurse employed by the [Particulars Withheld] **Authority**. Together the couple realizes an income of approximately **Kshs 500,000** a month, which is more than adequate to provide for the needs of the child. They have annexed copies of bank statements.

12. The Applicants both profess the Muslim Faith and intend to raise the child as a practicing Muslim. They were both examined and found to be medically fit. The Applicants have both annexed to the summons copies of clearance certificates issued to them by the **Kenya Police Service** indicating that neither has a criminal record.

13. The Applicants informed the court that the subject child is their niece whom they took into their home and have raised since the child was **three (3) years** old, even before they had their own child. They stated that they view the child as their own and now wish to formalize that relationship. They told the court that the entire family are in support of the Adoption.

14. The Applicants have appointed the son of the 2nd Applicant from his first marriage as legal Guardian for the said child. The two proposed legal guardians **MBN** and **AA** have both signed a letter of consent dated **19th January 2021**.

15. Based on the foregoing I am satisfied that the Applicants are suitable Adoptive parents.

16. The subject child was born in [Particulars Withheld], **Tana River County** in **August 2005**. The Childs biological parents divorced whilst she was still a toddler. The Childs biological mother left the home leaving the child behind and has now remarried and has **four (4)** children with her new husband. The Childs biological father having been left with a **three (3)** year old toddler whom he felt unable to care for handed over their child to the 1st Applicant who is a niece to the Childs biological father. The child has lived with and been raised by the Applicants for the past **thirteen (13)** years.

17. **Section 156** of the **Children Act** provides that for the consents which must be obtained before an application for adoption may be approved. **Section 156 (4) (a)** provides that –

“Subject to section 159 an adoption application shall be accompanied by the following written consents to the making of an adoption order in respect of any child-

(a) The consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child.”

18. In this case both biological parents of the minor are alive. They have both given their consent to the adoption vide the signed consents dated **1st February 2021**.

19. The Child's biological father **AAD** confirmed to the court that he voluntarily handed over his daughter to the 1st Applicant who is his niece after the Child's mother left him. He confirmed his consent for the adoption.

20. The Child's biological mother **MS HKM** also confirmed that she left the child with her biological father when the child was still a toddler. The mother told the court that she is divorced from the Child's father and has remarried another man with whom she has other children. The Child's biological mother also confirmed her consent to the adoption.

21. Both biological parents confirmed that the Applicants have raised the child for the past **thirteen (13)** years. They were both confident that the child faced a better life and future living with the applicants. Both confirm that they understand the permanent nature of an adoption order.

22. **Section 76(3)(a)** of the Children Act which provides:-

“(3) Where the court is considering whether or not to make an order with regard to a child, it shall have particular regard to the following matters—

(a) The ascertainable feelings and wishes of the child concerned with reference to the child’s age and understanding.” (own emphasis)

23. The subject child vide a hand written letter dated **5th February 2021** gave her own consent to the adoption. I was able to interview the child online. She was a healthy albeit shy teenager. She was in school at the time of the interview. The minor informed the court that she has lived with the Applicants in **Mombasa** all her life. She confirmed that she was aware that the effect of an adoption order would be to make her a child of the Applicants. She expressed her desire to be adopted by the Applicants.

24. The subject child was abandoned at an early age when her mother left the family home. Having lived with the Applicants for the past **thirteen (13) years**, this is the only family the child knows. The Applicants opened up their home to a child in need even before they had their own child. They have cared and provided for the subject child since she was a mere toddler. I have no doubt that the child has bonded with the Applicants and now views them as her parents.

25. On **7th August 2019** the **Children’s Court** sitting in **Mombasa** granted to the Applicants legal custody of the subject child. A copy of the relevant order is annexed to this summons. This adoption is the next step in formalizing the relationship between the child and the child.

26. In deciding upon any matter involving a child, courts are obliged to give priority to the best interest of the said child. **Section 4(2)** of the **Children Act 2001** provides:-

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”. (Own emphasis).

27. Finally, this is a Kinship adoption. The child will remain within the same family and will have regular contact with her biological relatives. I am convinced that this adoption serves the best interests of the child. Accordingly, I do allow this application and make the following orders:-

(1) The Applicants BNA and BNM are authorized to adopt the child RAA.

(2) The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.

(3) AA and MBN are appointed as the legal Guardians for the child.

Dated in Nairobi this 11th day of March 2022.

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MAUREEN A. ODERO

JUDGE



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