



Case Number:	Adoption Cause 22 of 2009
Date Delivered:	06 May 2010
Case Class:	Civil
Court:	High Court at Mombasa
Case Action:	Judgment
Judge:	Joseph Vitalis Odero Juma
Citation:	In Re Adoption of A.U (a minor) [2010] eKLR
Advocates:	-
Case Summary:	Family Law - child - adoption of a child - prerequisites for adoption - court consideration - best interests of the child
Court Division:	Family
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Adoption Cause 22 of 2009**

**IN THE MATTER OF: CHILDREN'S ACT NO. 8 OF 2001**

**AND**

**IN THE MATTER OF: A.U**

**IN THE MATTER OF: APPLICATION FOR ORDERS OF ADOPTION OF THE MINOR A.U**

**BY**

**P.K.M**

**AND**

**H.M.M**

**BETWEEN**

**P.K.M ..... 1<sup>ST</sup> APPLICANT**

**H.M.M.....2<sup>ND</sup> APPLICANT**

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### **JUDGMENT**

The Joint Applicants namely **P.K.M** (hereinafter referred to as the 1<sup>st</sup> Applicant) and **H.M.M** (hereinafter referred to as the 2<sup>nd</sup> Applicant) have made this application seeking to adopt the child **A. U** (hereinafter referred to as the child). The law relating to Adoption of Minors is to be found in S. 156 to S. 183 of the Children's Act of 2001. S. 156(1) of the said Act provides

*“156(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free fo adoption by a registered adoption society in accordance with the rules prescribed in that behalf”*

In this case the birth certificate of the child Serial No. [.....] indicates that the child was born on 11<sup>th</sup> February 2006. Therefore at the time this application was filed in court on 11<sup>th</sup> December 2009 the child was about 3½ years old way older than the six weeks provided for by S. 156(1). Annexed to the application is also a certificate serial No. [.....] issued by the “*Little Angels Network*” which is a registered Adoption Society declaring the child free for adoption. I am therefore satisfied that the pre-requisites for adoption as laid down in S. 156(1) have been fully complied with.

The 1<sup>st</sup> and 2<sup>nd</sup> Applicants are a couple who have been married to each other since August 14<sup>th</sup> 1993. The couple live in their own home in Magongo Mombasa and their union has been blessed by two daughters **E.N.K** born in 1995 and **E.S.K** born in 1997. The couple have volunteered at New Life Home in Mombasa where they met and developed a bond with the child. The child was placed in their care as Foster Parents when he was 1 year old and has lived in their home to date.

On 26<sup>th</sup> March 2010 this application proceeded before me by way of vive voce evidence. Both the 1<sup>st</sup> and 2<sup>nd</sup> Applicant expressed their desire to adopt the child and were both ready and willing to welcome him as an addition to their family. Each confirmed to me that they do understand their rights and obligations as adoptive parents and each committed themselves to fulfilling their obligations towards the child. Annextures to the application included a report from the Adoption Society, a report from the court appointed Guardian ad litem as well as a Home Report from the Children's Department. I have carefully perused all the above reports and find

them all to be favourable. It is clear that the Applicants are in a stable committed marital relationship. This is not their first experience at parenting as they have two biological daughters whom they have been parenting successfully. Both are in stable jobs and they earn sufficient to enable them provide the child with a good living. The family owns their own home and adequate provision has been made for the child in this home. It is clear from the reports that the Applicants are suitable parents and the child will be joining a stable Christian home. The extended family have also welcomed the adoption of the child. I find no reason to disqualify the Applicants herein as adoptive parents.

S. 158(4) of the Children Act provides that certain written consents must accompany every application for adoption. In this case no such written consents were availed. The child was abandoned at Coast General Hospital upon birth. The mother was stated to be a 13 year old victim of incest. The child's grand-mother who expressed a desire to have the child adopted also disappeared from the hospital without trace. To date no person has come forward to claim the child. It is clear that in these circumstances it would have not been possible to obtain written consents from the mother or other relatives of the child. I therefore exercise my discretion under S. 159(1)(a) of the Children's Act and dispense with the need for these written consents.

The underlying principal in making any legal decision involving a child is *"the best interests of the child"*. This is clearly spelt out in S. 4(2) of the Children's Act which 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 interests of the child shall be a primary consideration."***

Does the *'best interests'* principle support the adoption of this particular child by the Applicants" In my considered opinion it will. The child has lived with the Applicants since he was aged one year. He is now 3½ years old. No doubt a close bond has been forged between the child and his new family. I am satisfied that the Applicants are genuine in their desire to raise this child as their own. I m also satisfied that the child will receive proper nurturing care in their custody. The alternative would be to return the child to an institution which in my view would only serve to traumatize the child and would not provide the child with the family environment necessary to enable him mature into a responsible, happy and well adjusted member of society. I did also observe the child and noted that he was happy, clean and well fed. He interacted well and with affection towards both Applicants. I have no doubt that he already considers them as his parents. The upshot is that I do allow this application for adoption and in pursuance thereto I make the following orders

- (1) **THAT P.K.M and H.M.M** are hereby authorized to jointly adopt the minor child **A.U**.
- (2) **THAT** the name of **A.U** is hereby changed to **E. N.K**.
- (3) **THAT** the Registrar General is hereby directed to make an entry in the Adopted Children Register in these terms.

**Dated and Delivered at Mombasa this 6<sup>th</sup> day of May 2010.**

**M. ODERO**

**JUDGE**

Read in open court in the presence of:

Mr. Odhiambo holding brief for Mrs. Kipsang.

**M. ODERO**

**JUDGE**

**6/05/2010**



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