



**In re AKN (Baby) (Adoption Cause E202 of 2023)  
[2024] KEHC 16803 (KLR) (Children's) (12 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 16803 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CHILDREN'S  
ADOPTION CAUSE E202 OF 2023  
BM MUSYOKI, J  
AUGUST 12, 2024  
IN THE MATTER OF BABY AKN**

**IN THE MATTER OF**

**JMK ..... 1<sup>ST</sup> APPLICANT  
ZMN ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. In the originating summons dated 17th October 2023, the applicants seek two orders viz:
  1. That the applicants be authorized to adopt Baby AKN who is to be known as CMM and the Registrar General be directed to enter this adoption in the register of adoptions.
  2. That JWN and EMK be appointed as the legal guardians of the minor who shall be presumed to have been born in Kenya.
2. In support of the originating summons, the applicants called 3 witnesses. The first applicant told the court that he is married to the 2<sup>nd</sup> applicant and that they had no children. He adopted his statement dated 17-10-2023. The child was placed under the applicants' care on 19-12-2022. He also confirmed that he understood his responsibilities after adoption order is given. He was also aware that the adoption order once granted is irreversible. He told the court that he was ready to discharge his responsibilities as he had capacity and means of doing so.
3. The 2<sup>nd</sup> applicant testified and confirmed that she was wife to the 1<sup>st</sup> applicant and that the decision to adopt the child was made mutually. She added that they did not have biological children. She also referred to and adopted their joint affidavit dated 17-10-2023. Like the 1<sup>st</sup> applicant, she confirmed that they knew the effects of an adoption order and the same is irreversible. It was her further evidence that the other members of their family were aware of this application and were supportive of the same.



4. JWN was the third witness who told the court that he had consented to his appointment as legal guardian which he proved in form of a joint affidavit executed by himself and one EMK on 17-10-2023 and a consent signed by himself dated 9-12-2021. The second proposed legal guardian was not available to testify and the applicants waived the appointment of EMK. The parties told me that their motivation to adopt was their desire to expand their family and also give the child loving and caring family.
5. The child is said to have been offered for adoption by his biological mother because she did not have means of supporting the child and the biological father was at large. The child was taken to Little Angels Network after she was born on 15-03-2022. The biological mother one ENK and her mother were taken through counselling sessions. The consent of the biological mother and grandmother dated 17-03-2022 was produced in evidence.
6. Little Angels Network conducted an assessment and evaluation of the applicants and the child. Their report indicates that when the mother conceived, she informed the biological father but he failed to offer any support for the child. The two had together sired their elder child but she had to take care of the elder child with the help of her parents. The parents of the biological mother did not want anything to do with the younger child as they were already burdened by the first one. The biological father of the child herein wanted her to abort the pregnancy but E declined.
7. After the birth of the child, ENK and her mother went back to Little Angels Network who after discussion and more counselling, organized the child to be admitted at a children's home for some time to give the ENK time to reflect about her decision. ENK and her mother visited Little Angels Network again on 17<sup>th</sup> July 2022 on which visit they maintained their earlier decision and position as stated before. The two signed a consent indicating that they had given out the child for adoption. They signed a further consent on 15-11-2022.
8. Eventually, the child was committed to Hope House Babies Home vide Kiambu Chief Magistrate protection and care cause number E079 of 2022. The admission was for a period of three years. The applicant requested that the court should dispense with requirement of the consent of the biological father because he absconded duties and he was not traceable. The report by Little Angels Network recommends that the child be adopted in order to give him an alternative family where he will have family love instead of committing her under institutional care. The adoption committee of Little Angels Network sat on 18-11-2022 and was satisfied that adoption would be the best option for the child. They proceeded to declare the child free for adoption vide certificate number 002297 dated 16-11-2022.
9. The Hope House Babies Home placed the child under care of the applicants vide agreement to that effect dated 19<sup>th</sup> December 2022 and since that time, the child has been receiving love and care under the applicants. In addition to the report by Little Angels Network, the applicants produced report from Department of Children Services dated 6-02-2024 which was prepared and signed by Mary Arati and Nancy Waswa.
10. PMS was appointed by this court as Guardian *ad litem* on 2-11-2023 and carried out the duties bestowed upon her. She visited the applicant's home and had occasion to see the child. She prepared a report to that effect dated 22<sup>nd</sup> December 2023. The report which also recommended grant of the adoption orders was filed in court.
11. I have read through the reports of Little Angels Network, Hope House Babies Home, the Guardian *ad litem* and the Department of Children Services. I have also considered the circumstances under which the child found himself in the applicants' family.



12. I must laud the child's biological mother who refused to heed the proposal by the Pius who was responsible for her pregnancy to terminate the pregnancy. The steps she took in surrendering the child for adoption should be an encouragement to many girls and women who opt to abort a pregnancy for sole reason that they are unable to take care of their children once born. She decided to give the child a chance to enjoy life rather than terminating the pregnancy.
13. The *Constitution* of Kenya at Article 26(4) allows abortion only where the life and health of the unborn child and/or of the mother are threatened. The child herein was born healthy and his mother had no health issues to justify an abortion. I recognize and congratulate that human act. Although the adoption order is not reversible, E should be satisfied to know that the child she carried in her womb for nine months has a home and success in life.
14. I am convinced that granting the originating summons herein will not only serve the best interest of the child but also communicate to the society that ending a life of unborn child is not an alternative unless it is done on justifiable medical grounds. There are many options for the parents who are not able to maintain the cost of bringing up their children. People should be encouraged to let unborn children live.
15. In conclusion, I hold that the applicants have made a good case for granting their originating summons. I allow the same and make the following orders.
  - a. The applicants JMK and ZMN are hereby authorized to adopt Baby AKN.
  - b. The child shall henceforth be known and referred to as CMM.
  - c. JWN is hereby appointed as the Legal Guardian of the child.
  - d. The child is declared to be Kenyan citizen by birth and shall enjoy all the rights, privileges and benefits accruing to Kenyan citizens by birth.
  - e. The Registrar General is directed to enter this adoption in the register of adoptions.
  - f. The Guardian *ad litem* is hereby discharged.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF AUGUST 2024.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Miss Ambaka for the applicant

