



**In re Baby AK (The Child) (Adoption Cause E006 of 2024)
[2024] KEHC 12313 (KLR) (27 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 12313 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E006 OF 2024
G MUTAI, J
SEPTEMBER 27, 2024
IN THE MATTER OF BABY AK (THE CHILD)**

BETWEEN

MMM 1ST APPLICANT

MMM 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

Introduction

1. The Joint Applicants are married to each other. They married on 12th February 2006 at Meru WCA under the African Christian Marriage & Divorce Act (now repealed). They were born on 1st January 1979 and 1st January 1978, respectively. The couple do not have any living children of their own. A baby, Baby Lucas Himidi, was previously placed with them for adoption purposes. The child unfortunately passed away in March 2020. The couple were blessed with a biological child of their own, Mireya Meana, born on 19th March 2025. The child sadly died on 2nd June 2023.
2. The couple professes the Christian faith and lives at Zawadi Apartments. They state that they are of sound minds and have no criminal records. They are also financially stable and have the means to take care of the child.
3. The joint applicants propose to rename the child as Hakika Hamidi Mwashighadi if the application is allowed.



The Child

4. Baby Allan Kioko was born on 8th July 2022. His mother, ANM, abandoned him at MM on 19th August 2022. The biological mother claimed that she did not want him since she wasn't able to provide for him. The matter was reported at Mutituni Police Post, which was booked and recorded under OB NO. XXXX/2022. The child was taken to Machakos Level 5 Hospital for medical attention. Upon discharge, he was admitted to the Nest Children's Home. The Children's Court committed the child to the said home on 26th August 2022 vide Care & Protection Cause No 056 of 2022 for a period of 1 year.
5. Baby AK was received under the joint care and possession of the Joint Applicants on 6th October 2023 upon the execution of the Foster Care Agreement between them and the Children's Home. On 6th September 2023, the Little Angels Network, a registered adoption society, declared him free for adoption. The relevant certificate was issued on 6th September 2023.

The Originating Summons dated 7th May 2024

6. Vide the Originating Summons dated 7th May 2024 the Joint Applicants sought the following orders:-
 1. Pursuant to Article 14(4) of *the Constitution* of Kenya, 2010 and Part II, Section 7(1) of the *Children Act*, 2022, this honourable court be pleased to declare the child, Baby Allan Kioko, a Kenya citizen by birth;
 2. Pursuant to the provision of section 187 of the *Children Act*, 2022, this honourable Court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of section 186 of the *Children Act*, 2022;
 3. The Applicants, MMM and Mercy Makena Mwashighadi, be authorized to adopt Baby AK;
 4. Upon the making of the adoption order, the child to be known as Hakika Himidi Mwashighadi;
 5. Upon the making of the adoption order, Kimathi Gatwiri Leah and Fredrick Muriki Ntongai, be appointed the Legal Guardian of the child as provided for by the provisions of section 188 of the *Children Act*, 2022;
 6. Upon the making of the adoption order, the Registrar General does make an entry recording the adoption and the estimated date of birth of the child as 8th July 2022 in the Adopted Children Register as provided for by section 201 of the *Children Act*, 2022; and
 7. The costs of the application be costs in the cause.
7. The Originating Summons was supported by a statement in support of the adoption application sworn on 7th May 2024 to which various documents were attached.

Appointment of the Guardian ad litem

8. The Joint Applicants filed with the Originating Summons, a Chamber Summons dated 7th May 2024. Upon hearing the proposed guardian ad litem on 20th June 2024, this Court appointed Vincent Gitteyah Ogwoka as the guardian ad litem and, among other things, directed him to file the requisite report within 30 days of the date thereof.
9. Hearing of the Originating Summons was slated for 31st July 2024.



Hearing of the Originating Summons

10. The Originating Summons was heard on 31st July 2024. Five witnesses testified. The testimonies of each witness are below.
11. The first witness was Mr Joshua Mwalimu Wambua. Mr. Wambua works as a social worker for the Little Angels Network. He testified that they assessed the Joint Applicants and also freed the child for adoption. He stated that the report declaring the child as being free for adoption is dated 6th September 2023 and bears serial number 002385. The report approving the applicants is dated 22nd July 2022. He recommended the adoption of the child by the Joint Applicants.
12. The second witness was the first Applicant, MMM. Maxwell resides at Zawadi Apartments, Bamburi, with his wife, Marcy. He is a pastor of the Seventh-day Adventist Church. He testified that they wish to adopt Baby AK as they do not have a living biological child. Their only biological child died in 2020. Maxwell knows that adoption is permanent and that the child would have a right to inherit his property. They propose to rename the child Hakika Himidi Mwashighadi.
13. 13. The second applicant, Mercy Makena Mwashighadi, was the third witness. She testified that Maxwell is her husband and that they love children. She, too, is aware that adoption is permanent. She prayed for the issuance of the adoption orders.
14. The guardian ad litem, VGO, was the fourth Witness. V testified that he visited the home of the Joint Applicants on several occasions and observed their interactions. He observed that there was a good bond between the Joint Applicants and the child. The child was well-fed, had toys, played football and loved watching cartoons. V stated that he visited at the times when they were not expecting him so that he could get proper information. He produced his report. The report recommended the adoption of the child by the Joint Applicants.
15. The last Witness was Ms Louisa Kemuma. She is a Children’s Officer. She testified that she visited the home of the Joint Applicants on 11th July 2024 and prepared a report dated 22nd July 2024. She found that the child had bonded well with the family and seemed happy. She produced her report. Ms Kemuma recommended the adoption.

Analysis and Determination

16. I have considered the application herein, the documents supporting it, and the evidence of the various witnesses. The issues that emerge for determination are whether the child is available for adoption, whether the Applicant is fit to adopt the baby, and, most importantly, whether the adoption is in the best interest of the child.
17. I have already set out the circumstances under which the child was found. The child was abandoned shortly after birth by the birth mother. Attempts to reach the birth mother have not been successful. Given the period that has elapsed since the said occurrence, it is most unlikely that the biological parents of the child will ever resurface. Therefore, the need for consent under sections 186(8) and 187 of the *Children Act* 2022 is dispensed with. I am guided by the case of *In re HN (Baby)* [2020] eKLR, where the court stated:-

“As there is nobody laying claim over the baby, the requirement for consent is hereby dispensed with pursuant to Section 159(1) of the Children’s Act. In view of the above consideration, it is my finding that the child is available and suitable for adoption.”



18. Regarding the baby's nationality, the evidence adduced shows that he was found abandoned shortly after birth. Article 14(4) of *the Constitution* of Kenya, 2010 states that a child under eight years of age whose nationality and parents are not known is presumed to be a Kenyan citizen by birth. Given this provision, the child herein is presumed to be a Kenyan citizen by birth.
19. Regarding age, the child is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive baby under Section 184 (b) of the *Children Act*, 2022. Further, Section 185(1) of the said Act states that any child who is a resident of Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt the child is fit for adoption.
20. Concerning the Joint Applicants' suitability, they are both Kenyan citizens by birth, aged 45 and 46 years old at the time of this judgment, which ages places them within the age bracket of not less than 25 years nor more than 65 years for an adoptive parent in compliance with Section 186(2) of the *Children Act*, 2022. From the records that I have seen, the Joint Applicants have the means to take care of the child. They have no criminal records. Since the placement of the minor into their custody, the child has fully bonded with them. They understand the consequences of adoption and know that once an adoption order is made, it is permanent.
21. Consequently, I do not doubt that they meet the requirements to adopt the baby. I am guided by the case of *In re B (Baby)* [2018] eKLR, where the court stated:-

“I am of the considered view that weighing all factors and the evidence placed before me, the applicants are of sufficient ability to bring up the child and to furnish her with appropriate support and maintenance within their resource base available to them.”
22. On the question of whether the adoption is in the best interests of the baby, I am guided by Article 53(2) of *the Constitution* of Kenya, 2010 and Section 8(1) and (2) of the *Children Act*, 2022 which underscores the best interests of a child as the primary consideration before making any decision concerning a baby.
23. Further, the court in the case of *In re MA (Baby)* [2021] eKLR stated:-

“This court, in the case of *In re B (Baby)* [2018] eKLR, held that the purpose of Kenya's Constitution and Children's Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern, therefore, in every adoption cause is the best interest of that very child.”
24. The child herein was abandoned by the mother shortly after birth. He, therefore, needs necessities like food, shelter, education and clothing. He has fully integrated with the Joint Applicants. It is obviously in the child's best interests that this adoption application is allowed. I am guided by the case of *In re IK (Child)* [2020] eKLR, where the court stated:-

“She needs parental care to grow up as a normal child with emotional and physical protection, which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and well-being of the child. As *the Constitution* and the law state, in all matters concerning a child, the child's best interests are paramount.”

Disposition

25. In my view, the Originating Summons has merit. Consequently, I issue the following orders:-



1. I declare the child, Baby AK, a Kenya citizen by birth;
 2. I dispense with the consent of the biological parents to the adoption of Baby AK as they cannot be traced;
 3. I authorize MMM and Mercy Makena Mwashighadi to adopt Baby AK;
 4. I declare that Baby AK shall henceforth be known as HHM;
 5. I appoint KGL and FMN as the legal guardians of HHM and entrust them with his care if the Joint Applicants become deceased or are otherwise permanently unable to take care of him before he attains the age of majority;
 6. I direct the Registrar General to make an entry recording the adoption order made herein and the date of birth of HHM as being 8th July 2022 in the Adopted Children Registrar, as provided for by sections 201 of the [Children Act, 2022](#); and
 7. I discharge VGO from his responsibilities as the guardian ad litem.
26. I make no orders regarding costs as this is a non-contentious adoption matter.
27. Orders accordingly.

Dated and signed at Mombasa this 27th day of September 2024. Delivered virtually via Microsoft TEAMS.

Gregory Mutai

JUDGE

In the presence of: -

Ms Ngugi, for the Joint Applicants; and

Arthur - Court Assistant.

