



**In re Baby BG (Child) (Adoption Cause E006 of 2022)
[2024] KEHC 13641 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13641 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E006 OF 2022
MW MUIGAI, J
OCTOBER 31, 2024
IN THE MATTER OF CHILDREN ACT 2022
AND
IN THE MATTER OF BBG (CHILD)**

IN THE MATTER OF

SM 1ST APPLICANT

AMR 2ND APPLICANT

JUDGMENT

1. The Applicants herein, SM – ID. Number 99XXX99 and AMR – ID Number 125XXX64 (“the Applicants”) sought by their application to be allowed by this Court to adopt BABY BG (hereafter “the child”).
2. Vide Originating Summons application dated 18th January, 2023 the Applicants sought among other orders; that the Applicants herein SM and AMR be authorized to adopt BABY BG an infant who is to be known as BG; that MNP be appointed as Guardian ad litem in this case; that GMM of ID. Number 90XXX00 and FMR of ID. Number 114XXXX05 be appointed as the Legal Guardian of the child upon the granting of the Adoption Order; that the Director of Children’s Department to investigate the case and file a report; that the Registrar General be directed to make the order in the adopted Children’s Register an entry recording the adoption in accordance with the particulars set out in the schedule attached hereto. MNP of ID. Number 85XXX55 was appointed as the Guardian Ad Litem on 15/06/2023.
3. The Applicants further filed an application under certificate of Urgency and sought that a Certificate of Birth be issued reflecting the names of the minor as BBM.



4. The Application is supported by the Affidavit sworn by the SM (the 1st Applicant) on 25/04/2023 and stated that they wish apply for an original Certificate of Birth for the purposes of having both the Applicants registered as the parents of the Minor; SM as the father and AM as the mother/maiden.
5. The child herein Baby BG the subject of the present adoption proceedings was presumably born in 2018. The child was found having been abandoned on 20th October, 2019 at around 8.00 p.m. and rescued by one DK a resident of Maweni and of phone Number 0713XXXX53. The said DK made efforts to look for the child's parent within the community but the same turned futile. She then reported the incident at the Voi Police Station where the matter was booked vide OB No.59/20/10/2019. The Police Officers requested the good Samaritan to go back with the child. The matter was referred to the attention of the Voi Children's Officer who subsequently prepared a Report requesting for the committal of the child to St. Joseph Children's Home, Bura dated 24/10/2019.
6. The minor was committed at St. Joseph Children's Bura Children's Centre as a child in need of care and protection vide Protection and Care Case No. 15 of 2019 for a period of 6 months at the Resident Magistrate's Court at Voi on 24th October, 2019. On 19/08/2020 the committal Order was extended for a further period of 2 years. The minor whose age was estimated to be one (1) year at the time was admitted at the said home (St Joseph Children's Home Bura) on 24/10/2019.
7. The Voi Police Station in their final police letter dated 20/05/2022 confirmed that no one came forward to claim the child as his or hers. Also St. Joseph Children's Home reported that during the minor's stay in the institution no relative had turned up to claim the child and neither have they received any information from the police Department regarding any claimants.
8. The minor herein stayed at the St. Joseph Children's Home Bura until 1st July, 2022 when he was placed under the care and control of Mr. & Mrs M (the Applicants herein) where he has since continued to enjoy the parental love, care and good nurturing accorded to him by the Applicants. The minor was thus freed by the Buckner Kenya Adoption Society in their Case Committee sitting on 3rd June, 2022 vide Certificate Declaring Child Free for Adoption Serial No.0557.
9. The following documents were availed from Kenya Children's Homes Adoption Society for baby BG;
 1. Admission Form to the Home dated 24/10/2019
 2. Sub-County's letters requesting for the committal of the child to the Home.
 3. Committal Order to the Home dated 24/10/2019
 4. Extension of the committal order dated 8/09/2019
 5. OB extract from Voi Police Station
 6. Children Officer's social inquiry Report
 7. Initial police letter from Voi police station – OB No.59/20/10/2019 dated 20/05/2022
 8. Final police letter from Voi Police Station dated 20/05/2022
 9. Witness statement from the good Samaritan, DK dated 19/05/2022.
10. The Applicants herein SM and AMR are residents of Embakasi East Sub-County Utawala Ward within Nairobi County. The Applicants annexed the following documents in support of their application;
 1. Certificate of Marriage Serial No.28XX43
 2. Copies of the identification cards for the Applicants



3. Medical Reports for the Applicants
 4. Consent of the legal Guardians
 5. Recommendation letters from Rev. Moses of [particulars withheld] Church, Utawala, UL and TN
 6. Consent letter from CM the Applicants biological daughter
 7. Police clearance Certificate
 8. Copies of Payslip for both Applicants & Financial Statement of the 1st applicant
 9. Ownership of properties documents
 10. Consent of the Guardian Ad Litem
 11. Copies of Identification card of the Legal Guardians
11. Pursuant to the *Children Act*, The Buckner Kenya Adoption Services, the relevant Adoption Society, prepared and filed in Court a favorable Report of 9/10/2023 in respect of the proposed adoption of the child by the Applicant. Ms Mary Kamiri a Social Worker at Buckner Kenya Adoption Services appeared in Court on 25/09/2024. She told the Court that the child herein subject of these proceedings was found abandoned on 3/06/2022. The case of abandonment was reported at Voi Police Station vide OB/59/10/2019. The minor was committed to St. Joseph Children Home on 24/10/2019 and a Committal Order No. 15 of 2019 issued. Efforts to trace the child's relatives was unsuccessful. The minor was placed with the Applicants on 1/07/2022 and since then it is over 2 years. The minor and the Applicants have bonded well and these adoption proceedings are for the best interests of the minor.
 12. According to the Report by the Buckner Kenya Adoption Services dated 9/10/2023, the Applicants made an adoption application to the Buckner Kenya Adoption Services dated 20/03/2022 and was their 1st Adoption application. The Applicants applied to be placed with a boy child aged below 5 years. They were taken through the relevant interviews; a home assessment was carried out as well as the pre-placement counselling. The Applicants were found eligible and a case committee sitting on 3/06/2022 approved their application. The Applicants were placed with the minor on 1/07/2022 and have been fostering the minor since then. Prior to placement baby Benedict was declared free for Adoption by the Agency Case Committee sitting of 3/06/2022 and a Freeing Certificate Serial No. 0557 was issued by the Adoption Agency.
 13. The 1st Applicant is a Civil Servant working with the [particulars withheld] as a Building Inspector while the 2nd Applicant is a Clerk working with [particulars withheld] a Clearing company. The Applicants are a couple they were married on 9/09/2000 at Kayole Catholic Church vide Certificate of Marriage Serial No. 28XX43. The Applicants herein have been blessed with three (3) biological daughters namely; PW – aged 21 years old (autistic), CM – aged 19 years old and MS - aged 13 years. The Applicants lives in their own 4 bedroomed house. They live with their 3 daughters and a care giver.
 14. The Applicants are both employed. The 1st Applicant earns a gross income of Kshs.83,630/- while the 2nd Applicant earns a gross income of Kshs.35,000/- (copies of Payslip for both applicants & financial Statement of the 1st Applicant herein attached) hence capable of taking good care of the minor. The Applicants are Christians worshipping at Home Family Catholic Church, Utawala and belongs to [particulars withheld] Small Christian Community. The Applicant's extended family are supportive of the Adoption whereby one of the 2nd Applicant's sister FR and her husband GMM accepted to be the Legal Guardian of the minor and filed the Guardianship Form. The Applicants are confirmed to be of



good general health as per health medical reports are attached. The Applicants do not have a Criminal Record as per the good conduct from CID. Since the placement with the minor on 1/07/2022 to date the minor has indeed bonded well with the Applicants. The Adoption Agency recommended the Adoption.

15. The Director of Children's Services filed their Report dated 15/04/2024 in respect of the proposed adoption of the child by the Applicants. Mr. Ezekiel Kimani the Assistant Director Children's Services Nairobi County appeared in Court on 25/09/2024. He told the Court that he did a home visit to the Applicants residence at Utawala. He observed that the child is well taken care of and the bonding between the child, Applicants and the biological children is commendable. The officer after perusing all the documents was satisfied that the child is available for adoption and recommended the adoption without any reservation.
16. Similarly, the Report indicated that the Applicants are a married couple and were married in the year of 2001 and have been blessed with 3 biological daughters. The minor herein BG after the determination of these adoption proceedings is to be renamed BB, the Date of birth be indicated as 18/02/2018 and the age be 6 years. The Applicants motivation for adoption is to make their family bigger and give their biological daughters a brother. The Applicants are stable financially, they live in their own 4 bedroomed house in Utawala where they live with their 3 biological daughters and a nanny. The Applicants also owns a 3 Acre piece of land in Taita. The Applicants understand the right of the child to inheritance in accordance with the *Law of Succession Act*. On observation the child has bonded well with the Applicants since he was placed under their foster care and they have provided a conducive environment for the child to grow and develop. The Applicants do not have any criminal history. The Applicants have met the requirements for local adoption as provided in the *Children Act 2022* and all other enabling provisions of the law. They have proposed GMM and FR be appointed legal guardians in case of death or incapacity. The Director of Children's Services recommended the adoption for the well-being of the child.
17. The Guardian Ad Litem, MNP also filed the Statutory Report dated 15/05/2024. He appeared in Court on 25/09/2024 and told the Court that he visited the Applicants home in Nairobi where they are neighbours. The minor has been enrolled in School - [particulars withheld] Academy in class PP2. The Applicants lives in [particulars withheld] area. The Applicants are both working in Nairobi.
18. Similarly, the Report dated 15/05/2024 in support of these Adoption proceedings. He stated that the Applicants live in their own four bedroomed house in Utawala in Nairobi County. The minor herein was placed with the Applicants for foster care on 25th March, 2023 and has been residing with the Applicant from that time to date. He further stated that he has known the Applicants for over 5 years and have interacted socially with the Applicants and have known them to be loving, honest, responsible, dependable and very hardworking.
19. The Legal Guardians GMM of ID. Number 90XXX00 and FMR of ID Number 214XXXX05. The Legal Guardians are a couple brother in law and sister to the Applicants filed Guardian Letter of Consent dated 26th April, 2022 as well as a Report dated 18/01/2023. They stated that they are aware that their role entails responsibility over the child herein concerning the child's care, education, health and welfare in the event of the Applicant's death or incapacity before the child attains the age of majority. They further stated that the Applicants have support from both the immediate and extended family which have fully welcomed the minor as part of the family. The Legal Guardians are in support of the Adoption process.
20. CM one of the Applicants biological daughters gave her consent dated 5th May, 2022 in relation to the said Adoption and wishes him to become a part of the family.



21. All the Statutory Reports filed in respect of the proposed adoption of the child by the Applicants recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants fulfilled all the legal requirements in relation to the adoption of the child.
22. The home visits by the Guardian ad litem, the Adoption Society Representative and the Director of the Children's Services established that the Applicants are financially and socially stable and have emotional capability to provide for the upkeep and education of the child and give parental care.
23. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicant have had the custody of the child, the child has bonded well. The child considers the Applicants to be his parents.

Disposition

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application.
2. The Applicants, SM and AMR are hereby allowed to adopt Baby BG.
3. Henceforth, the child shall be known as BBM.
4. The child's date of birth is 18/02/2018 and the place of birth shall be Voi.
5. The child is a Kenyan Citizen by birth and entitled to all rights of a Kenyan citizen.
6. GMM and FMR shall be the Legal Guardians of the child should such eventuality arise.
7. This Court directs the Registrar General to duly enter this order in the Adoption Register.
8. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security of the child within one year of the Adoption in the best interests of the child under Section 8 of Children's Act 2022.
9. The Guardian ad litem is hereby discharged.

It is so ordered.

JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 31ST DAY OF OCTOBER, 2024 (PHYSICAL/VIRTUAL CONFERENCE).

M. W. MUIGAI

JUDGE

