



**In re Baby MM alias Abandoned Baby (A Child) (Adoption Cause E011 of 2024) [2024] KEHC 14750 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 14750 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E011 OF 2024  
G MUTAI, J  
OCTOBER 30, 2024  
IN THE MATTER OF THE CHILDREN ACT, 2022  
AND  
IN THE MATTER OF THE ADOPTION OF BABY  
MM, ALIAS ABANDONED BABY (A CHILD)  
AND  
IN THE MATTER OF AN APPLICATION FOR ORDERS OF  
ADOPTION OF BABY MM, ALIAS ABANDONED BABY (A CHILD)  
BY JWG AND JNM  
(THE JOINT APPLICANTS)**

**BETWEEN**

**JWG ..... 1<sup>ST</sup> APPLICANT**

**JNM ..... 2<sup>ND</sup> APPLICANT**

**AND**

**LITTLE ANGELS NETWORK ..... RESPONDENT**

**JUDGMENT**

1. The Originating Summons before me is dated 10<sup>th</sup> June 2024. Vide the said Summons, the Joint Applicants seek the following orders: -

1. Pursuant to Article 14(4) of the *Constitution* of Kenya, 2010 and Section 7 of the *Children Act*, 2022, this honourable court be pleased to declare the child Baby MM alias Abandoned Baby as a Kenyan citizen by birth;



2. Pursuant to the provisions of Sections 187 of the *Children Act*, 2022, this honourable Court be pleased to dispense with the requirements of the consent to the adoption required by the provisions of Section 186 of the *Children Act*, 2022;
  3. The Applicants, JWG and JNM be authorized to adopt Baby MM , alias Abandoned Baby, a child;
  4. Upon the making of the adoption order, the child be known as AWW ;
  5. Upon the making of the adoption order Esther Wambui Mungai be appointed a legal guardian of the child as provided for by the provisions of Section 195 of the *Children Act*, 2022;
  6. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of birth of the child as 23<sup>rd</sup> May 2012 in the Adopted Children Registrar as provided for by Section 201 of the *Children Act*, 2022; and
  7. The costs of this application be costs in the cause.
2. The Joint Applicants are a married couple. They were born on 5<sup>th</sup> August 1973 and 23<sup>rd</sup> September 1974, respectively. They got married on 14<sup>th</sup> August 1999 at the xxxxx Baptist Church. The Joint applicants do not have biological children of their own. They reside at xxxxx Estate in Bamburi.
  3. JWG and JNM produced Certificates of Good Conduct. They averred that they are both of sound mind. According to the Statement in Support of the Adoption Application, they are Christians. If the adoption application is allowed, they intend to raise the child as a Christian.
  4. The Joint Applicants attached various documents to their application, which I have perused when writing this judgment.
  5. The child is estimated to have been born on 23<sup>rd</sup> May 2012. She was found abandoned within xxxxx Estate near the main bus stop at Naivasha by police officers who were on patrol on 30<sup>th</sup> May 2012 at 10 pm. She was taken to Naivasha District Hospital on the same day by the said police officers.
  6. Children Officers based at Naivasha secured a home placement for her at New Life Home Trust, Kilimani. She was admitted to the said home on 15<sup>th</sup> June 2012, pending committal by the Court. The child was committed to the said home on 12<sup>th</sup> October 2012 for three years vide Protection & Care Case No 446 of 2012.
  7. During the child's stay, no one came to claim her. On 24<sup>th</sup> January 2013, Baby MM was discharged from the said home into the care of Mr JWG and JNM , the Joint Applicants herein.
  8. The child was declared free for adoption vide a certificate bearing serial number 001209 issued on 23<sup>rd</sup> January 2013. The report to declare the child free for adoption is dated 23<sup>rd</sup> January 2013.
  9. The Joint Applicants filed the Chamber Summons dated 10<sup>th</sup> June 2024, together with the Originating Summons, in which they sought to have Rachel Talu Phaurine Mshingo appointed as the guardian *ad litem* in respect of these proceedings and for her to prepare the requisite report.
  10. I heard the Chamber Summons application on 11<sup>th</sup> July 2024. Being satisfied with Rachael Talu Phaurine Mshingo's suitability, I appointed her as the guardian *ad litem* and ordered her to prepare the requisite report within 14 days of the said date. I also ordered the Director of Children Services, Mombasa, to conduct a social enquiry and prepare the relevant report within a similar period.



11. The matter was heard on 2<sup>nd</sup> October 2024. Five witnesses testified. I will briefly summarize their evidence below.
12. Joshua Mwalimu Wambua, a social worker with the Little Angels Network, was the first witness. Mr Wambua testified that his organization assessed the Joint Applicants and the child. Being satisfied that the child was free for adoption, they issued the requisite certificate on 23<sup>rd</sup> January 2013. The certificate bears serial number 001209. The report on the assessment of the Joint Applicants is dated 15<sup>th</sup> August 2012. Mr. Wambua testified that his organization recommends the adoption.
13. The second witness was from the Directorate of Children Services. Mr Emmanuel Kiprotich Tendet testified that he is a Children's Officer based at Mvita Sub-county. It was his evidence that their office conducted a home visit on 27<sup>th</sup> August 2024 and that they thereafter wrote the report dated 30<sup>th</sup> August 2024, which was filed on 24<sup>th</sup> September 2024. Mr. Tendet testified that the Joint Applicants meet the legal requirements for adoption. He averred that the Joint Applicants had bonded well with the child. He noted that the child had a birth certificate indicating that the Joint Applicants are her biological parents. He stated that this ought to be corrected.
14. JWG , the 1<sup>st</sup> Joint Applicant, was the third witness. He testified that the co-applicant is his wife. They got married on 14<sup>th</sup> August 1999. The child was given to their custody on 24<sup>th</sup> January 2013; since then, she has become part of their lives. JWG testified that he was aware of the legal implications of adoption and stated that he knew it was permanent and irrevocable. If the adoption application is allowed, they propose to change her name to AWW .
15. Ms JNM was the fourth witness. She testified that she lives with her husband, John, in Lakeview, Bamburi Phase 5. She stated that they wished to adopt the child she referred to as Angela Wangari. According to her, the adoptive child is 12 years old now. She, too, is aware of the legal implications of adoption and knows it is permanent and irrevocable. She confirmed their intention to rename her as AWW . Regarding the birth certificate, she testified that they were misled into getting it so that they could register the child for KNEC examinations.
16. The fifth witness was the guardian *ad litem*, Rachel Talu Phaurine Mshingo. She produced her report dated 30<sup>th</sup> July 2024. She testified that the home environment is good. The Joint Applicants relate well with the child. She visited them twice and observed their interaction. She recommended the adoption.
17. The last witness was Esther Wambui Mungai. Esther is JNM 's sister. She is married to Mr Waliaula Wafubwa, a teacher at Muyeye Secondary School. Esther is the proposed legal guardian. She testified that she and her husband consented to her appointment as a legal guardian and stated that she was aware of the implications of being appointed.
18. As the child is 12 years old and cognizant of what section 8(4) of the *Children Act* 2022 provides, I interviewed the child. The child sees the proposed adoptive parents as her parents and has no objection to being adopted.
19. I have considered the application, supporting documents, and various witnesses' evidence. The issues that emerge for determination are whether the child is available for adoption, whether the Joint Applicants are fit to adopt the baby, and, most importantly, whether the adoption is in the child's best interest.
20. I have already set out the circumstances under which the child was found, and I need not rehash it here, save to state that she was found abandoned within Karagita Estate near the main bus stop at Naivasha by police officers who were on patrol 30<sup>th</sup> May 2012 at 10 pm. Neither the birth mother nor the unknown biological father have come forward to claim her. In the circumstances, the need for the



biological parents' consent, pursuant to 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.”

21. Regarding the baby’s nationality, the evidence adduced shows that she was abandoned shortly after birth by her unknown biological mother. Article 14(4) of the Constitution of Kenya, 2010 states that a child under eight years of age whose nationality and parents are unknown is presumed to be a Kenyan citizen by birth. Given this provision, the child herein is presumed to be a Kenyan citizen by birth.
22. 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.
23. Concerning the Joint Applicants’ suitability, the 1<sup>st</sup> Applicant is a Kenyan citizen by birth, aged 51. The second applicant is also a Kenyan citizen. At the time of the delivery of this judgment, she is 50. Given their respective ages, they are within the age bracket of not less than 25 or more than 65 years for adoptive parents and are thus 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 child 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.
24. Consequently, I do not doubt that they meet the requirements to adopt the child. 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.”

25. On the question of whether the adoption is in the best interests of the child, 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.
26. 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.”

27. The child was abandoned shortly after birth. She, therefore, needs necessities like food, shelter, education and clothing. She 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.”

### **Determination and Final Orders**

28. In my view, the Originating Summons has merit. Consequently, I issue the following orders:-
1. I declare the child Baby MM , a Kenyan citizen by birth;
  2. I dispense with the consent of the biological parents to the adoption as Baby MM was abandoned by the birth mother shortly after birth and has not been traced to date. The identity and whereabouts of the biological father are unknown;
  3. I authorize JWG and JNM to adopt Baby MM ;
  4. I declare that Baby MM shall henceforth be known as AWW ;
  5. I appoint EWM as the legal guardian of AWW and entrust her with the care of AWW in the event that the Joint Applicants become deceased or are otherwise permanently unable to take care of her before she attains the age of majority; and
  6. I direct the Registrar General to make an entry recording the adoption order made herein and the date of birth of AWW as being 23<sup>rd</sup> May 2012 in the Adopted Children Registrar as provided for by section 201 of the Children Act, 2022; and
  7. The guardian *ad litem*, Ruth Talu Phaurine Mshingo, is hereby discharged.
29. This being a non-contentious adoption matter, I make no orders as to costs.
30. Orders accordingly.

**DATED AND SIGNED AT MOMBASA THIS 30<sup>TH</sup> DAY OF OCTOBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Ms Katisya, for the Joint Applicants; and

Arthur - Court Assistant.

