



**In re Unknown Female Infant alias CG (The Child) (Adoption Cause E008 of 2024) [2024] KEHC 14174 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 14174 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E008 OF 2024  
G MUTAI, J  
OCTOBER 30, 2024  
IN THE MATTER OF THE CHILDREN ACT, 2022  
AND  
IN THE MATTER OF UNKNOWN FEMALE AFRICAN INFANT ALIAS CB (THE CHILD)**

**BETWEEN**

**IMM ..... APPLICANT**

**AND**

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

**JUDGMENT**

**Introduction**

1. IMM (hereafter “the applicant”) is a single Kenyan lady of African descent born on 22<sup>nd</sup> April 1984. She resides at XXX Apartments in Bamburi, Mombasa County. The applicant is a person of sound mind with no criminal record. The child, identified as Unknown Female AI alias CG, was received under her care on 8th December 2023 and has been with her ever since.
2. The child was declared free for adoption by the Little Angels Network on 10<sup>th</sup> November 2023.

**The Originating Summons dated 27<sup>th</sup> May 2024**

3. Vide the Originating Summons dated 27<sup>th</sup> May 2024 the applicant 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, Unknown Female AI alias CG, a Kenyan citizen by birth;



2. Pursuant to the provisions 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 Applicant IMM be authorised to adopt Unknown Female AI alia CG;
  4. Upon the making of the adoption order, the child to be known as INM;
  5. Upon the making of the adoption order LNM 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 do make an entry recording the adoption and the estimated date of birth of the child as 7<sup>th</sup> April 2023 in the Adopted Children Register as provided for by section 201 of the *Children Act, 2022*; and
  7. The costs of this application be costs in the cause.
4. The Originating Summons was supported by an affidavit of the applicant, a statement supporting the adoption application, and various documents, including reports by Little Angels Network, that this Court has perused.

### **The Child**

5. From the reports that the Court has seen, the child was born on 7<sup>th</sup> April 2023. She was abandoned shortly after birth by her birth mother. Two ladies, PWM and DNN, found the child. Upon rescuing the child, the two took her to the Parklands Police Station, where the matter was booked in the Occurrence Book as entry number OB/02/07/04/2023. The child was admitted for treatment at Aga Khan University Hospital on the said date, where she remained until 12<sup>th</sup> April 2023, when she was discharged. Upon her discharge, she was admitted to the House of Charity Children's Home.
6. On 5<sup>th</sup> May 2023, the Nairobi Children's Court in MCP & CCO E277 of 2023 committed the child to the House of Charity Children's Home for 3 months.

### **The Proposed Adoptive Parent**

7. As stated, the Applicant is a Kenyan lady holding a Kenyan identity card number 23XXXXX51. She professes the Christian faith. She has had custody of the child since 8<sup>th</sup> December 2023, upon signing the Home Care Agreement with the House of Charity Children's Home.

### **Appointment of the Guardian ad litem**

8. The Court heard the Chamber Summons dated 27<sup>th</sup> May 2024, vide which the applicant sought the appointment of the guardian ad litem on 4<sup>th</sup> July 2024. Ms ECY, the proposed guardian ad litem, testified. Upon assessing her suitability, this Court appointed her as the guardian ad litem and directed her to file the requisite report within 30 days of the said date.

### **Hearing of the Originating Summons**

9. The Originating Summons was heard on 19<sup>th</sup> September and 9<sup>th</sup> October 2024. A total of 4 Witnesses testified. I shall briefly set out their evidence below.
10. Mr Joshua Mwalimu Wambua was the 1<sup>st</sup> Witness. Mr. Wambua is a social worker with the Little Angels Network. He testified that his agency assessed the applicant and issued a report dated 1<sup>st</sup> December 2021. They also assessed the child and issued the certificate declaring her as being



free for adoption on 10<sup>th</sup> November 2023. The report bears serial number 002420. Mr. Wambua recommended the adoption.

11. The second Witness was IMM. I is the applicant herein. She stated that she is a social worker employed by an organization called [Particulars withheld]. The applicant testified that she loves children and willingly chose to adopt as he hopes to give destitute children hope in life. Ms Mumbua knows that adoption is permanent and that the child shall have the right to inherit her estate. It was her evidence that she had identified a legal guardian willing to take care of the child in the event she died or was unable to take care of her permanently. The applicant testified that she had the support of her family. I intends to let the child know once she is of age that she is adopted.
12. The guardian ad litem, ECY was the third witness. Ms Y testified that she visited the applicant's home twice a week and observed the interaction between the applicant and the child and how she was fed, played and interacted with the nanny. Ms Y produced her report, which recommended the adoption of the child of the Applicant.
13. The 4<sup>th</sup> and last witness was Mr Emmanuel Kiprotich Tendet. Mr Tendet is a Children's Officer employed by the Directorate of Children Services. He averred that his officer made a social enquiry by visiting the applicant's home. He testified that the applicant meets all the legal requirements. Mr Tendet stated that the applicant and the child had bonded well and that her family supported the adoption, as evidenced by the fact that the applicant's sister is the proposed legal guardian. He recommended the adoption.

#### **Analysis and Determination**

14. I have considered the application herein, the documents in support thereof and evidence of the various witnesses. The issues that emerge for determination are whether the child is available for adoption, if the applicant is fit to adopt the baby, and, most importantly, whether the adoption is in the best of the child.
15. I have already set out the circumstances under which the child was found. The child was abandoned shortly after birth by her mother. Nobody has come forward to claim her. Given the period that has elapsed since the said occurrence, it is most unlikely that the biological parents of the child will ever turn up. The need for consent pursuant to sections 186(8) and 187 of the *Children Act*, 2022 is therefore 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.”
16. Regarding the baby's nationality, the evidence adduced shows that he was found abandoned within a few hours of her 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.
17. 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.
18. Concerning the Applicant's suitability, she is a Kenyan citizen aged 40 years at the time of this judgment, which places her 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 Applicant has the means to take care of the child. She has no criminal records. Since the placement of the minor into her custody, the child has fully bonded with her. She understands the consequences of adoption and knows that once an adoption order is made, it is permanent.

19. Consequently, I do not doubt that she meets 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.”

20. 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.

21. 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.”

22. The child herein was found abandoned. She, therefore, needs basic necessities like food, shelter, education and clothing. She has fully integrated with the Applicant. 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**

23. In my view, the application has merit. Consequently, I issue the following orders:-

1. I declare the child, Baby Unknown AI alias CG, a Kenyan citizen by birth;
2. The consent of the biological parents of the child to the adoption is hereby dispensed with;
3. The applicant, IMM, is hereby authorised to adopt Baby Unknown AI alias CG;
4. Baby Unknown AI alias CG, shall henceforth be known as INM;
5. I appoint LNM as the Legal Guardian of INM and entrust her with the responsibility of taking care of INM in the event the applicant becomes deceased or is otherwise permanently unable to take care of her before she attains the age of majority; and
6. The Register General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of INM as being 7<sup>th</sup> April 2023 in the Adopted Children Register as provided for by section 201 of the *Children Act*, 2022.



24. I make no orders regarding costs as this is a non-contentious adoption cause.

25. 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 Ngugi, for the Applicant; and

Arthur - Court Assistant.

