



**In re Baby DM (The Child) (Adoption Cause E010 of 2024)
[2024] KEHC 14175 (KLR) (25 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 14175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E010 OF 2024**

G MUTAI, J

OCTOBER 25, 2024

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY DALIA
META BY MR. JACKSON ILASEMWA GEVERA AND MS DORCAS MULEE MWOLOLO**

BETWEEN

JIG 1ST APPLICANT

DMM 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

Introduction

1. The Originating Summons before me is dated 11th June 2024. It was jointly filed by Mr JIG and Ms DMM (whom I shall hereafter refer to as “the Joint Applicants”).
2. Vide the said application, the Joint Applicants seek 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 Dalia Meta, a Kenya 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 applicants, JIG and DMM, be authorised to adopt Baby Dalia Meta;
 4. Upon the making of the adoption order, the child to be known as Dorita Nuru Gevera;



5. Upon the making of the adoption order, MN and SMM be appointed the Legal Guardians of the child as provided for by provisions of Section 188 of the *Children Act, 2022*;
 6. Upon the making of the adoption order, the Register General do make an entry recording the adoption and the estimated date of birth of the child as March 19, 2023 in the Adopted Children Registrar as provided for by section 201 of the *Children Act, 2022*; and
 7. The costs of the application be costs in the cause.
3. The Joint Applicants attached, among other documents, a statement in support of the adoption application, to which was annexed consent to the adoption by the birth mother, the Joint Applicant's marriage certificate, Foster Care Agreement, preplacement report, and certificate of declaring a child free for adoption.

The Child

4. The Child, Baby Dalia Meta, was born on 19th March 2023. Her birth mother is Ms LAO. Ms O approached a medical social worker at Ruiru Level IV Hospital seeking assistance in giving up her unborn child for adoption. The social worker approached the New Life Home Trust. The latter, in turn, sought help from Little Angels Network and interviewed the mother on March 20, 2023, a day after she delivered. Ms O stated that she could not care for her second-born child as she is indigent. She also disclosed that she had HIV.
5. After the implications of adoption were explained to her, Ms O confirmed that she was in agreement and signed the certificate of Acknowledgement and initial consent dated March 20, 2023. The child was admitted to the New Life Home Trust on March 21, 2023.
6. The Senior Principal Magistrate at Ruiru committed the child to the New Life Home Trust for one year vide Care and Protection Cause No E026 of 2023.

The Biological Parents

7. The mother of the child, as has been stated, is Ms LAO. As of September 6, 2023, she was 26 years old. Ms O works as a house help in Nairobi and has one other biological child who lives with her mother in Busia County. Ms O gave up the child for adoption and signed all the requisite forms.
8. Ms O identified the child's father as Mr B, a 42-year-old mason. The two were in a relationship that broke up shortly after she informed him that she was pregnant. Mr B's present whereabouts are unknown, as she lost contact with him shortly after that. As he could not be contacted, his consent to the adoption of the child wasn't obtained.

The Proposed Adoptive Parents

9. JIG and DMM are married to each other. They got married on December 8, 2009 at Jubilee Christian Church. They were born on September 20, 1978 and 15th February 1980 respectively.
10. The couple reside in Mombasa at [Particulars Withheld]. They have 3 children, JGG (13), JSC (10) and JNG (4).
11. From the documents annexed to the Originating Summons, the Joint Applicants appear to be financially stable, have no criminal records and are physically and emotionally fit to adopt the child.



Appointment of the Guardian ad litem

12. The Joint Applicants filed a Chamber Summons dated 11 June 2024 together with the Originating Summons, vide which they sought to have HMM of [Particulars Withheld], Mombasa, appointed as a guardian ad litem in respect of this adoption cause.
13. Upon hearing her testimony on July 25, 2024, I appointed her as the guardian ad litem, having been satisfied that she is fit to be appointed as such.

Hearing of the Originating Summons

14. The Originating Summons was heard on October 1, 2024. Five witnesses testified. I shall provide a summary of their testimony below.
15. The first Witness was Joshua Mwalimu Wambua. Mr. Wambua is a social worker with the Little Angels Network, an adoption society. He testified that Little Angels Network assessed the Joint Applicants and declared the child free for adoption. Their report regarding the child is dated September 6, 2023. That of the proposed adoptive parents is dated November 3, 2021. The said adoption society issued the certificate declaring the child free for adoption. Mr. Wambua recommended the adoption of the child.
16. Mr. Emmanuel Tender was the second Witness. Mr. Tender works with the Children's Department of Mombasa County. His department conducted a home visit on September 10, 2024. Their report was filed on October 1, 2024. He testified that the Joint applicants and the child had bonded well and that they treated Baby Dalia Meta as their biological child. The Witness stated that the Joint Applicants were in a stable marriage, had the financial means, and met all the requirements. He thus recommended that the adoption application be allowed.
17. The 2nd Applicant was the third Witness. Ms Mwololo stays at Utange, Bamburi, and works for an international organization in its sales and marketing department. She and the 1st Applicant have been married for 15 years and have 3 biological children. Ms. Mwololo stated that she knew that adoption was final, once made. She also knows that Baby Dalia Meta will have the right to inherit from them if the adoption application is allowed. She testified that they intended to bring up the child in the Christian faith and would call her Dorita Nuru Gevera if the application was allowed. Ms Mwololo stated that she would inform the child of her adoption at an appropriate time.
18. Mr JIG, the first applicant, was the fourth witness. Mr Gevera is the husband of the second applicant. He is engaged in the business of distribution of motor lubricants in the coastal region. He testified that they had the intention to adopt a child since they were in university. He, too, knows that adoption is permanent. He prayed that the adoption application be allowed.
19. The guardian ad litem was the fifth Witness. Ms HMM is a resident of Bombolulu. She testified that she visited the Joint Applicants at their residence and observed their interaction with the child. In her opinion, the child is well taken care of and interacts well with her siblings. Ms. Mutua recommended the adoption.

Analysis and Determination

20. I have considered the application herein, the supporting documents, and the 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.



21. I have already set out the circumstances under which the child was found and I need not rehash it here. I must, however, note that the child was given up for adoption by the birth mother. I have seen her consent and am satisfied that she did so willingly. Her reason for doing so was the inability to provide for the child. Mr B, the child's father, broke up with the mother shortly after she became pregnant. His present whereabouts are unknown. The mother, on the other hand, consented to the adoption. Therefore, the need for the father's 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.”

22. Regarding the baby's nationality, the evidence adduced shows that his biological mother offered him up for adoption shortly after birth. The biological mother is a Kenyan citizen holding identification card number 36016698. She ails from Esikulu Sublocation, Bukhayo Location of Busia County. Article 14(1) of the *Constitution* of Kenya, 2010, states that a child whose father or mother is a Kenyan at the time of the child's birth is a Kenyan citizen. Given this provision, the child herein is a Kenyan citizen by birth.

23. 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.

24. Concerning the Joint Applicants' suitability, the 1st Applicant is a Kenyan citizen by birth, aged 46. The second applicant is also a Kenyan citizen. At the time of the delivery of this judgment, she is 44. 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.

25. 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.”

26. 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.

27. 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.”

28. The mother of the child gave her up for adoption. She, therefore, needs basic 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.”

Disposition

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

1. I declare the child Baby Dalia Meta, a Kenyan citizen by birth;
2. I dispense with the consent of the biological father to the adoption as Baby Dalia Meta was given up for adoption by the birth mother shortly after birth. The whereabouts of the biological father are unknown;
3. I authorize JIG and DMM to adopt Baby Dalia Meta;
4. I declare that Baby Dalia Meta shall henceforth be known as Dorita Nuru Gevera;
5. I appoint MN and SMM as the legal guardians of Dorita Nuru Gevera and entrust them with her care in the event 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 Dorita Nuru Gevera as being March 19, 2023 in the Adopted Children Registrar as provided for by section 201 of the *Children Act*, 2022; and
7. The guardians ad litem, HMM, is hereby discharged.

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

Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF OCTOBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Ms Ngugi, for the Joint Applicants; and

Arthur - Court Assistant

