



**In re EO (Child) (Adoption Cause E018 of 2024)
[2024] KEHC 15841 (KLR) (29 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15841 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E018 OF 2024
G MUTAI, J
NOVEMBER 29, 2024
IN THE MATTER OF THE CHILDREN ACT, 2022
AND
IN THE MATTER OF ADOPTION OF BABY EO (A CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF
BABY EO (A CHILD)
BY JOO AND EKA (THE JOINT APPLICANTS)**

IN THE MATTER OF

**JOO 1ST APPLICANT
EKA 2ND APPLICANT**

JUDGMENT

1. Vide an Originating Summons dated 31st July 2024, the Joint Applicants sought the following orders:-
 1. That the Applicants be authorized to adopt Baby EO, a child who is to be known as EJ and the Registrar General be directed to enter this adoption into the Register of Adoptions;
 2. That TMA and GWK be appointed as the Legal Guardians of the child; and
 3. That the child be presumed to be born in Loitoktok, Kajiado County in the Republic of Kenya.
2. The grounds upon which the application is based are that the Joint Applicants meet all the prerequisites for adopting the child and have sufficiently bonded with him.



The Joint Applicants

3. In the Statement in support of the Application, the Joint Applicants stated that they may hold national identity card numbers 137XXX71 and 138XXX95, respectively. They married on 28th April 2007 at Breakthrough Chapel International, Mombasa. The couple has not been blessed with biological children of their own.
4. The Joint Applicants averred that they love children and wished to expand their family and give the child herein a family an environment where he can grow and be loved. They stated that they approached Buckner Adoption Services on 7th September 2023, seeking to adopt a child. Their application was approved, after which a children's home called Betania Children's Home placed the minor in their custody for fostering with the possibility of adopting him on 13th November 2023.

The Proposed Adoptive Child

5. According to the Joint Applicants, the child herein was found abandoned on 9th February 2021 at [particulars withheld], Loitoktok Sub County, Kajiado County. He was approximately 2 days old at the time he was found. Upon being found, the incident was reported at Kimana Police Station under OB Number 9/9/2/2021. The child was committed to Betania Children's Home by the Kajiado Children's Court under the Care and Protection Cause No E002 of 2021 under the recommendation of the Loitoktok Sub County Children's Office.
6. Since being found, no one has claimed the child. The child was freed for adoption on 6th October 2023. The certificate declaring the child as free for adoption has serial number 0698.

The Appointment of a guardian-ad-litem

7. The Joint Applicants filed, together with the Originating Summons, a Chamber Summons dated 31st July 2024, vide which they sought to have TSA appointed as guardian-ad-litem regarding this adoption proceedings. The application also sought an order compelling the Directorate of Children Services to undertake a social enquiry and prepare and file the requisite report on the Joint Applicants' fitness to adopt the child.
8. On 26th September 2024, this Court heard the Chamber Summons application aforesaid. Being satisfied with the suitability of the proposed guardian-ad-litem, I appointed her. I also ordered the Directorate of Children Services to conduct a social enquiry and to prepare and file the requisite report within 30 days of the appointment date of the guardian-ad-litem.

Evidence of the Witnesses

9. I heard the Originating Summons on 31st October 2024. The Joint Applicants are also in the process of adopting Baby GI and filed Adoption Cause No. 17 of 2024, in that respect. The adoption application was heard concurrently with this one, as all the witnesses were similar. A total of 7 Witnesses testified. I shall set out the evidence of each Witness in brief below.
10. The first witness was Emmanuel Kiprotich Tendet of the Directorate of Children Services Mombasa. Mr Tendet testified that he visited the home of the Joint Applicants on 1st October 2024. The Directorate of Children Services report is dated 29th October 2024. He testified that the Joint Applicants meet all the legal requirements for adoption as they are of the right age, have sound minds, and are Kenyan nationals. He stated that the Joint Applicants had bonded well with the child and could cater for her material needs.



11. The second Witness was JOO. Mr. O is the 1st Joint Applicant. He testified that he is a businessman. He said he wished to adopt the child with his wife, E. It was his evidence that he understood the effect of adoption. He was aware that the adoptive child would have all the rights a biological child has. He added that they were adopting two children, GI and EO. He proposed that Baby EO would be called EJ if the adoption application was successful. Mr. O averred that he was aware that adoption is permanent.
12. EKA was the third Witness. She is the wife of Mr. O. She is a procurement officer with [particulars withheld]. The family lives in Ganjoni. She testified that she knew the adoption was permanent and was prepared. In her view, the two children they proposed adopting were their children and would, therefore, be entitled to everything they own. She testified that the children would be brought up as Christians. Ms A stated they had proposed her brother and his wife as the legal guardians.
13. The guardian-ad-litem was the fourth Witness. Ms TSA testified that she is an employee of a security company. It was her evidence that she carried out a home visit. She testified that she found the proposed adoptive parents to be suitable and recommended the adoption.
14. Mr TMA was the fifth witness. Mr A is the brother of the 2nd Joint Applicant and thus the brother-in-law of the 1st Joint Applicant. He testified that he consented to be appointed legal guardian and signed a consent dated 31st July 2024. Mr A is married to Ms GWK, and together, they are the proposed legal guardians.
15. The sixth witness was Ms GWK. She is a resident of Jomvu and works as a cashier. She testified that she knows the duties and responsibilities of a legal guardian. Her evidence was that if the Joint Applicants died, she, together with her husband, would step in and take care of the two adoptive children.
16. The last Witness was Mr James Jumba Peru. Mr Jumba Peru works as a social worker for Buckner Kenya Adoption Services. It was his evidence that they assessed the Joint Applicants and found them to be suitable as adoptive parents. They also declared the children to be free for adoption. The applicants were approved on 6th October 2023 to adopt two children, a boy and a girl. They were placed with the 1st child on 13th November 2023 and the 2nd child on 12th March 2024. Baby E was declared free for adoption on 6th October 2023. His certificate has serial number 0xx8, while Baby GI was declared free for adoption on 14th February 2024. Her certificate has serial number 0xx4. Mr. Peru testified that the children are thriving, have bonded well with the adoptive parents, and see the Joint applicants as their only parents. He produced two reports dated 25th and 26th September 2024 for Baby GI and Baby EO, respectively. He recommended the adoption.

Analysis and Determination

17. 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.
18. I have already set out the circumstances under which the child was found. The child was abandoned shortly after birth by his mother. Nobody has come forward to claim him. 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. Therefore, the need for 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.”

19. Regarding the baby’s nationality, the evidence adduced shows that he was found abandoned shortly after his 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.
20. 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.
21. Concerning the Joint Applicants’ suitability, they are respectively Kenyan citizens both aged 49 years at the time of this judgment, which 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 I have seen, the Joint Applicants have the means to care for the two children they are adopting. They have no criminal records. Since the placement of the two minors in their joint custody, the child has fully bonded with them. The Joint Applicants understand the consequences of adoption and know that once an adoption order is made, it is permanent.
22. Consequently, I do not doubt that they 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.”

23. 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.
24. 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.”

25. The child herein was found abandoned. 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.”

Determination and Final Orders

26. In my view, the application has merit. Consequently, I issue the following orders:-
1. I declare the child, Baby EO, a Kenyan citizen by birth;
 2. The consent of the biological parents of the child to the adoption is hereby dispensed with;
 3. The Joint Applicants, JOO and EKA, are hereby authorised to adopt Baby EO;
 4. Baby EO shall henceforth be known as EJ;
 5. I appoint TMA and GWK as the Legal Guardian of EJ and entrust them with the responsibility of taking care of him in the event the Joint Applicants become deceased or are otherwise permanently unable to take care of EJ 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 EJ as being 7th February 2021 in the Adopted Children Register as provided for by section 201 of the Children Act, 2022.
27. I make no orders regarding costs as this is a non-contentious adoption cause.
28. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 29TH DAY OF NOVEMBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Ms Kemunto, for the Joint Applicants; and

Arthur - Court Assistant.

