



**In re Baby HM (Adoption Cause E002 of 2021)
[2024] KEHC 16632 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16632 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
ADOPTION CAUSE E002 OF 2021
RM MWONGO, J
DECEMBER 19, 2024
IN THE MATTER OF ADOPTION OF BABY HM**

IN THE MATTER OF

AMG 1ST APPLICANT

ENN 2ND APPLICANT

JUDGMENT

1. The applicant lodged in this court an originating summons dated 16th December, 2020 seeking the following orders:
 1. That applicants be authorized to adopt the child, Baby HM to be known as LKM .
 2. That DBN and FWN be appointed as legal guardian of the child in the event of the death or incapacity of the applicants before she is of full age and fully self-reliant.
 3. That the Registrar General be directed to enter this adoption into the Register of Adoptions.
 4. That the child be presumed to be a Kenyan citizen by birth.
 5. That the court be pleased to make any further orders it deems necessary.
2. The application is supported by the applicants’ joint statement and on the following grounds:
 - i. That the applicants have met the legal prerequisites set out for adopting a child and have sufficiently bonded with the child for over three months.
 - ii. That the child has thrived under their care and identifies with the applicants as her parents.
 - iii. That it is in the best interest of the child that the adoption order be granted in favour of the applicants.



3. Further, there is attached affidavit of consent to act as guardian ad litem of Baby HM by CMG dated 16th December, 2020.

Background of the applicants

4. The applicants in their statement dated 16th December, 2020 state that they have met the legal prerequisites set out for adopting a child and have sufficiently bonded with child. That it is in the best interest of the child that the adoption order be granted in favour of the applicants.
5. The applicants state they are Kenyan citizen of sound mind. AMG was born in 1976 while ENN was born on 11th December, 1981. They had been traditionally married to each other for more than 5 years. They formally celebrated their civil marriage on 23rd February, 2018. The 1st applicant earn a living working as a farmer, a private courier motorcycle rider and a trader in sale of rice while the 2nd applicant works as a farmer and a trader in the sale of rice. They are in good health and financially stable considering that they have a stable income from the business they run. They are capable of providing for the child's needs in a comfortable and safe environment.
6. They have never been charged with nor convicted of a criminal offence referred to in the Third Schedule of the Children's Act 2001. They have proposed DBN and FWN as the legal guardian of the child in the event of their death or incapacity before the child is of full age and fully self-reliant. They state that they have a happy marriage despite not having children. They decided to adopt a child to provide a family and love.

The child

7. The child is of male sex estimated to have born on 1st January, 2019 to Miss SCS. On 3rd January, 2019 the mother of the child approached KKPI Adoption Society with the intention of offering up her child for adoption. She was taken through the explanatory Memorandum of offering the child up for adoption and she signed a certificate of acknowledgment on 3rd January, 2019. In person and through a letter to the society dated 3rd January, 2019. On 29th she stated that, she is unemployed student who is not financially stable and that she already has one child whom she is currently struggling to raise.
8. On 3rd January, 2019, the child was admitted to Imani Rehabilitation Agency for Abandoned Children. On 9th January, 2019, Embakasi Sub-county children's officer wrote a letter requesting to have the child committed to the agency.
9. On 5th April, 2019, the children's office through Protection & Care Case No. 424 of 2019 successfully applied to the children's court in Nairobi for committal of the child into the custody of Imani Rehabilitation Agency for Abandoned Children.
10. The child's history was reviewed by KKPI Adoption Society which thereafter declared the child to be free for adoption on 31st July, 2019 under a freeing certificate serial number 699 issued in accordance to section 156(1) of the Children's Act 2001.
11. The applicants have had care and control of the child for more than the statutory three months. The child's current name is HM aka LKM. He is 5 years 10 months old. He attends PP1 at [Particulars Withheld] Academy and his favourite game is football and also playing with other children.
12. Having instituted adoption proceedings, the applicants sought the appointment of CMG as the guardian ad litem vide Chamber Summons dated 4th March, 2021. The same was confirmed through a court order dated 22nd November, 2021.



13. On 15th March, 2023 the court confirmed that the Guardian ad Litem report and the Children Department assessment and evaluation report had been filed. Both reports recommended this prospective adoption.
14. The Children Officer's Report filed on 19th January, 2023 recommended the following:
 - a. The court find that the child was not validly declared free for adoption.
 - b. The court to find that KKPI Adoption Society contravened section 159 (8a) of the Children's Act and invoke the provisions of section 159(5) to allow withdrawal of the purported consent. In the alternative, order the adoption society to seek fresh consent from the biological mother.

Analysis and Determination

15. Having considered the application herein, affidavits in support together with the annexures thereof. This is a local adoption application given that the applicant is a Kenyan citizen. The only issue is whether the applicants should be allowed and

Section 181 (1) of the Children's Act, 2022 provide that-

“Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya.”

16. The child is above six (6) weeks and below 18 years which is the requisite age bracket for a child to qualify for adoption (see Section 184 (1) of the Children's Act). It is to be noted although the *Children Act* 2022, was assented to on 26th July 2022, the application herein was made in 2021, under the *Children Act* 2010. The provisions of paragraphs 3 of the Seventh Schedule to the *Children Act* 2022 permit the court to continue proceedings that were commenced under the repealed Act, and to be concluded thereunder.

Suitability of the applicants for adoption.

17. The applicants are adults aged below 65 years and above 25 years being the mandatory age requirement for any adoptive parent seeking to adopt a baby pursuant to Section 186(1)(2) of the Children's Act.
18. The applicants are Kenyan citizen thus placing the application herein as one of local adoption.
20. They have been assessed and evaluated by various stake holders and found suitable in terms of the set criteria. They are financially stable, physically, mentally, morally, socially and emotionally fit. Further, have no criminal record and does appreciate the consequences of adoption. In the circumstances, the applicants have met the necessary legal requirements to adopt the baby. This has been confirmed by Director, Children Services report filed on 19th January, 2023

Is the adoption in the best interest of the child?

21. The main factor for consideration before making any decision affecting affairs of a child is the child's best interest. This principle is articulately covered under Article 53(2) of *the Constitution* and Section 4(2) and (b) of the Children's Act.

Article 53(2) provides:

- (2) A child's best interests are of paramount importance in every matter concerning the child.

22. The Children Officer's Report filed on 19th January, 2023 recommended that:



- a) The court to find that KKPI Adoption Society contravened section 159 (8a) of the Children’s Act and invoke the provisions of section 159(5) to allow withdrawal of the purported consent.
- b) In the alternative, the court order the adoption society to seek fresh consent from the biological mother.

Analysis and Determination

23. Having considered the application herein, affidavits in support together with the annexures thereof. This is a local adoption application given that the applicant is a Kenyan citizen. The only issue is whether the applicant should be allowed to adopt the child.

Section 181 (1) of the Children’s Act, 2022 provide that-

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Suitability of the applicants for adoption.

25. The applicants are adults aged below 65 years and above 25 years being the mandatory age requirement for any adoptive parent seeking to adopt a baby pursuant to Section 186(1)(2) of the Children’s Act.
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29. The Children Officer’s Report filed on 19th January, 2023 recommended that:

- a) The court to find that KKPI Adoption Society contravened section 159 (8a) of the Children’s Act and invoke the provisions of section 159(5) to allow withdrawal of the purported consent.
- b) In the alternative, the court to order the adoption society to seek fresh consent from the biological mother.



30. Ruling dated 3rd October, 2023, this court stated:

“In light of the recommendations of the Children Officer’s Report, and the substantive nature of the documents subsequently availed, the Court declines to further consider the adoption application herein pending the filing of an affidavit explaining and in relation to the unstamped documents placed in the court file.”

31. The applicants filed a supplementary affidavit dated 14th December, 2023 and deposed that they had filed legible and dated declaration certificate in support of declaring the child free for adoption and post placement report.

Section 184 of the *Children Act* provides:

1. A person shall not commence any arrangements for the adoption of a child unless— (a) the Council, in accordance with the rules, has declared the child free for adoption; and (b) the child has attained the age of six weeks.

32. In re Adoption of Raa (Minor) [2022] eKLR

Section 156 of the *Children Act* provides that for the consents which must be obtained before an application for adoption may be approved. Section 156 (4) (a) provides that –

“Subject to section 159 an adoption application shall be accompanied by the following written consents to the making of an adoption order in respect of any child-

- a. The consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child.”

33. The children’s officer spoke to the biological mother and she indicated her desire to have her child back.

Section 186 of Children’s Act, 2022 provides:

“(8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—

- (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance of the child.”

34. . The child’s biological mother has not signed a fresh consent to confirm her desire to have her child adopted. It is in the best interest of the child to seek a fresh consent from her biological mother.

DATED AT KERUGOYA THIS 19TH DAY OF DECEMBER, 2024

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R. MWONGO
JUDGE

Delivered in the presence of:

1. No representation for Applicants



2. Court Assistant, Murage

