



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby MO (Adoption Cause E015 of 2022)
[2023] KEHC 2847 (KLR) (29 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2847 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E015 OF 2022
MW MUIGAI, J
MARCH 29, 2023
IN THE MATTER OF CHILDREN ACT 2001
IN THE MATTER OF BABY M O A.K.A MMJ**

IN THE MATTER OF

ENJ APPLICANT

JUDGMENT

1. Pursuant to the judgment delivered by this Court on 16th day of February, 2023 the Court observed as follows;-
 - a. The Social Inquiry & Home Study Report is by Change Trust; Medical Particulars of Prospective Adopters was by Buckner Kenya Services and the Report to Declare Child Free For Adoption is by Little Angels Network and no explanation was provided for 3 Adoption Agencies instead of 1 duly registered adoption society recommending that an adoption order to be made to the Applicant.
 - b. The Certificate declaring the child free for adoption was not availed but only the Report and no explanation was presented on why the Certificate was not availed in Court.
 - c. The letter from Funyula Police Station of 3/2/2021 indicates that a business lady RT of Mobile 0720XXXXX37 reported that she found the child aged 21/2 years in the hotel left by an unknown person and the child was taken to a Children Home.
 - d. By a letter dated 6/6/2018, Funyula Station, wrote to Mumias Law Courts indicated the child was aged 6 years.



- e. The Report by Children Officer to the Court stated the date of birth 2014 and aged 5 years and the Sub – County Children Officer of Busia stated that she is was aged 3 years by a Report of 13/01/2016/8.
- f. There is no evidence of financial capability – Bank statement, Title Deed/ allotment letter, incorporation of company/Business Entity.
- g. A letter from the Local administration where the Applicant resides.
- h. Identification Documents of the Applicant – ID Copy, telephone contacts, business premises.
- i. All these Reports are not in tandem on the age of the child and requires confirmation before completion of the adoption process.

2. In its disposition this Court directed thus;

“On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant; subject to the pending issues being regularized and the pending documents availed through the DR MHC.”

Certificate of urgency dated 9th March, 2023

3. The applicant herein filed an application and sought the following prayers:

- a. That the Applicant has availed the documents in compliance with the judgment delivered on 16/02/2023.
- b. That the minor subject of this adoption cause is in grade 4 and is required to be registered with the National Education Management Information System (NEMIS).
- c. That the registration has stalled since the minor is yet to obtain a birth certificate in his new names pursuant to prayer (v) of the originating summons filed on 22/09/2022 due to the adoption process that is yet to be finalized.
- d. That unless the orders sought herein are granted the minor subject of this adoption cause is likely to suffer greatly as he will be denied registration with the National Education Management Information System (NEMIS) which is now mandatory requirement by the ministry of Education in all schools with the Republic of Kenya.

4. The application is supported by the Applicants Supporting Affidavit sworn on 10th March, 2023 deposing as follows:

- a. That the Applicant’s full names is ENJ a resident of {Particulars withheld} in Mung’ala sub-location, Mumbuni Location within Machakos County.
- b. That in the year 2020 the Applicant made an adoption application to Buckner Kenya Adoption but due to Covid 19 pandemic the aforementioned adoption agency indicated that there was going to be a delay as they were not placing children for adoption outside Nairobi County hence she made an application to Change Trust adoption agency who visited the applicant’s home and compiled a report and finally approved the adoption.



- c. That Little Angels Network was the agency responsible for declaring the child free for adoption.
 - d. That the subject minor was found abandoned and thus his age was based on mere assessment and that is why there is a discrepancy.
 - e. That the child after being rescued was placed at Busia Compassionate Children’s Home for 5 months and thereafter transferred to Strong point children’s home by the sub county children officer via a letter dated 13/01/20216. That the Strong point children’s home relocated from Mungatsi, Nambale Sub County to Matungu Sub County before the minor could be committed to Court.
 - f. That the Applicant is a person of means being a farmer and a land lady owning two plots namely {Particulars Withheld}measuring appox.0.07 Ha and {Particulars Withheld} Measuring Approx.0.064 Ha where she has constructed nineteen rental houses from where she collects rent.
5. The Applicant has annexed the following documents in support of her application;
- a. National Identification card
 - b. Letter from the Assistant Chief Mung’ala Sub-location
 - c. Police clearance certificate dated 25th November, 2020
 - d. Report by the Sub-County Children’s Officer Machakos
 - e. Social Inquiry and home study by Change Trust dated 30/04/2021.
 - f. Copy of Certificate declaring child free for Adoption from Little Angels network serial no. 0xxxx1 dated 16/03/2014.
 - g. Letter from the Sub-County Children’s Officer Busia placing the child at the Strong Points Children’s Home, Nambale.
 - h. Committal order from SRM Court at Mumias committing the minor to Strong Points children’s home.
 - i. Mpesa Statement from Safaricom
 - j. Title Deed for{Particulars Withheld}
 - k. Title Deed For {Particulars Withheld}
6. The Applicant herein, ENJ of ID No. 2xxxxx3 sought by her application to be allowed by this Court to adopt Baby MO (hereafter “the child”).
7. Vide Originating Summons application dated 21st day of September, 2022 the Applicant sought among other orders, that Mary Wausi be appointed as the child’s Guardian Ad Litem, that the Director of Children’s Department, Ministry of Gender, Children and Social Development investigate the Applicant fitness to adopt and file a report; that the Applicant be authorized to adopt baby MO to be known as MMJ. Mary Wausi was appointed by this Court as Guardian Ad Litem on 23rd November, 2022.
8. The child (MO) who is the subject of the present adoption proceedings was presumed to born on 16th March, 2014. The child is alleged to have been abandoned by unknown person at {Particulars Withheld}



- in Funyula Town on 16th August, 2015. The hotel owner RTO of cell phone number 072xxxxx37 reported the matter at Funyula police station. She reported that an unknown person entered her hotel with a small boy whose name was unknown and was about two and a half years old. The person ordered food and left the boy eating. The said RTO took the child to Funyala Children's office where she was advised to report the matter to the police station. The matter was reported at Funyala police station vide Occurrence book entry Number 16. Roselyne was then requested to stay with the child to give time if the parents could come. She took care of him for three days and then took the child to Busia Children's Home, where he was placed in a Children's home.
9. The children Officer at Funyala placed the child at Busia Compassionate Children's Home for five months. The child was committed at Strong Point Children's Home for a period of three (3) years on 7th March, 2019 vide Protection and Care Case Number 27/2019 by the SPM'S Court in Mumias. On 3rd February, 2021 the police department furnished a final letter stating that no one had presented a claim the child.
 10. The Little Angels Network conducted further investigation on 26th July, 2021 they contacted the good Samaritan by the name RTO who informed them that up to date, nobody has ever come to her hotel to claim the child. The Case Committee of Little Angels Network deliberated on this matter in a meeting held on 4th August 2021 and was satisfied that the child in this matter MO is available for adoption and further that adoption would be in the child's best interest. Baby MO was declared free for adoption vide Certificate of Declaration No.0xxxx1.
 11. The following documents were availed from Little Angels Network Society's for baby MO. Child declaration certificate bearing series number 002191 dated 4/08/2021 Birth certificate of baby MO serial no. 00xxxxx8 Initial letter from {Particulars Witheld) Police Station dated 6/08/2015 Sub County children Officer's placement letter of 13/01/2016 Sub county Children Officers transfer letter of 13/01/2016 Admittance Form to the home dated 13/01/2016 Final letter from {Particulars Witheld) Police Station dated 6/06/2018 Sub-county children officer's report dated 7/03/3019 Court committal dated 7/03/2019 Protection & Care Case No.27/2019. Good Samaritan's letter of 3/02/2021 Sub county Children Officer's placement letter dated 3/2/2021 final police letter dated 3/02/2021 Medical report dated 8/02/202 Care agreement form pre-placement report
 12. Pursuant to section 187 (2) (1) of the *Children Act* 2022, Little Angels Network, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicant. Another report in respect of the proposed adoption of the child by the Applicant was prepared by the Director of Children's Services, and this report was similarly in favor of the proposed adoption. The Guardian *Ad Litem*, MW also filed the statutory report pursuant to section 160(2) of the *Children's Act* in which she noted that the proposed adoption of the child by the Applicant would be in the best interests of the child.
 13. The Change Trust Adoption Society filed their report on 30th April, 2021. The report contains family and professional background information of the Child's Adoptive Parent. According to the report the Applicant approached Change Trust stating that she is motivated by the urge to experience parental care and love to a less fortunate child. The report further states that the Applicant is 63 years and would like to adopt a male child aged between 4-6 years. An interview was conducted with the aim of assessing the suitability to adopt and it was evident that the Applicant was very friendly, organized, neat and relaxed and answered all questions without hesitating. The said report is pursuant to section 177 (7) (b) of the *Children's Act* 2022 for adoption of the child subject of these proceedings baby Moses Ouma.
 14. The Applicant has never been married and has no biological children due to medical condition that could not be corrected. The Applicant herein is adopting a child named MO. Baby MO the child



subject of these proceedings is the first child the applicant is planning to adopt. The Applicant is socially and economically endowed to care and cater for the child's needs. The minor is at Applicant's home and considers the applicant his mother and is unwilling to leave her. The Applicants extended family are in support of the adoption since they are aware that the applicant cannot sire her own biological child. The Adoption Society recommends the adoption.

15. On 15/12/2022 Ms Lizzie Agala a representative from Change Trust Adoption Agency appeared in Court. She stated that the Applicant was assessed in a Care Committee meeting on 30th April, 2021 and recommended the Applicant is free to adopt. They conducted the interview at the Applicant's home and found that she is organized, neat and very relaxed. The Case Committee sitting on 30th April, 2021 approved the Adoption of a male child age 3-5 years. They recommend the adoption.
16. The Director of Children Services through a Report dated 13/12/2022 in respect of the proposed adoption of the child by the Applicant was prepared by Ms Emily Kimanzi of Machakos Sub – County children's office. Ms Emily Kimanzi appeared in court in respect of these adoption proceedings. The report contains family and professional background information of the Child's Adoptive Parent. ENJ as per Chief's letter of 1/11/2020 resides in {Particulars Withheld}village Mungala sub-location Mumbuni, Machakos County is not married and has no biological children due to medical condition that could not be corrected. She produced police clearances Certificate. The Applicant is in real estate business hence, she is financially and economically capable to take care of the child. The applicant lives in their home where she was born in Mugalla. She shares the one acre piece of land with her three brothers. She is planning to relocate to her land in the same area where she will build a home for the minor. She is currently taking care of her aged mother and has the support of her younger sister who is the legal Guardian. The applicant owns one acre of land in Mugalla and two plots of 50 by 100 in the same area where she has constructed rental houses she raises her income from these houses. The extended family is also in full support of the adoption. They recommend that the Applicants be allowed to adopt the minor.
17. The Guardian ad Litem, {Particulars Withheld}filed her Report dated 28th day of November, 2022 in support of these Adoption proceedings. She stated that the applicant is fully committed to her role as the minor's parent and that the applicant has ensured that the needs of the minor are well attended to by providing food, shelter accommodation as well as necessary parental support. She had visited the home of the Applicants several times and observed that the child has good interaction with the applicant. She observed that applicant is a good parent to the minor and she is already taking good care of the said child. That the applicant has support from her extended family which has fully welcomed the minor as part of the family. The Guardian *Ad Litem* recommended the adoption.
18. The Legal Guardian{Particulars Withheld} filed her letter of consent dated 21/09/2022. In the said document stated that she understood that as the Legal Guardian she is expected to take over parental responsibility over the minor in case of any eventuality she recommended the adoption.

DISPOSITION

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application.
2. The Applicant, ENJ is hereby allowed to adopt Baby MO.
3. Henceforth, the child shall be known as MMJ.
4. The child's date of birth is 16th March, 2014 and the place of birth shall be Funyula Town.



5. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
6. {Particulars Withheld) shall be the legal guardian of the child should such eventuality arise.
7. This Court directs the Registrar General to duly enter this order in the Adoption Register.
8. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security of the child within one year of the Adoption in the best interest of the child under section 8 of [Children's Act](#) 2022.
9. The Guardian *Ad Litem* is hereby discharged.

It is so ordered.

DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 29TH DAY OF MARCH 2023 (PHYSICAL/VIRTUAL CONFERENCE).

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF:

MS MUTHOKI H/B MR. NTHIWA - FOR THE APPLICANT

GEOFFREY/PATRICK - COURT ASSISTANT(S)

