



**In re PM (Baby) (Adoption Cause E021 of 2022)  
[2023] KEHC 2636 (KLR) (28 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2636 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ADOPTION CAUSE E021 OF 2022  
MW MUIGAI, J  
MARCH 28, 2023  
IN THE MATTER OF CHILDREN ACT 2001  
AND  
IN THE MATTER OF BABY PM**

**IN THE MATTER OF**

**PMK ..... 1<sup>ST</sup> APPLICANT  
FMM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The applicants, PMK – ID No xxxx - Tel No 07242xxxx and FMM - ID No xxxx– Tel No 0722xxxx(“the Applicants”) sought by the Originating Summons to be granted orders by this Court to adopt Baby PM (hereafter “the child”).
2. In the originating summons application dated November 28, 2022, the applicants sought the following orders, that the requirements of section 186 (8) (a) of the *Children Act 2022* be waived as provided for under section 187 (1) of the Act; that FKM be appointed Guardian Ad Litem for purposes of this adoption; that the Applicants be authorized to adopt baby PM and the baby shall thereafter be known as SMM; that RMK ID xxxx and CKM ID xxxx be appointed the Legal Guardians of the child; that the Director of Children’s Department to investigate the case and file a report; that the Registrar General be ordered to make in the adopted Children’s register and entry recording the adoption in accordance with the particulars set out in the schedule attached hereto.
3. FKM filed consent to act as *guardian ad litem* and an affidavit of fitness on November 30, 2022. On December 15, 2022, the court was appointed by this Court as Guardian ad Litem.
4. The Applicants herein are residents of [particulars Withheld, Sub-County within Machakos County. They are husband and wife having married under customary law vide certificate of marriage Serial No xxxx. The 1<sup>st</sup> applicant (PMK) is a driver and farmer while the 2<sup>nd</sup> applicant (FMM) is a



farmer. The applicants annexed the following documents in support of their application ;Certificate of marriage No xxxxCase summary of the minorBirth notification serial No xxxxCertificate of acknowledgementMedical reports for the prospective adoptive parentsCopies of ID cards for the Applicants, the *guardian ad litem* and legal guardiansCertificate declaring a child free for adoptionGuardian's letters of consentA photograph of the adoptive parents and the minorFinancial/ Bank statement of PMK (1<sup>st</sup> Applicant)

5. The child (PM) who is the subject of the present adoption proceedings was born on August 10, 2018 at Mbagathi Hospital to Ms DN of ID No xxxx. On August 13, 2018 the mother and the child were discharged from the Mbagathi Hospital. An acknowledgement of birth Notifications No xxxx is annexed to the application. DN the biological mother approached the Kenyan for Kenyan Peace Initiative (KKPI) Adoption Society with the intention of offering the child up for adoption. The mother was taken through the memorandum of understanding for offering the child for adoption which she understood and duly signed the certificate of acknowledgment on August 14, 2018, annexed to the Application that she understood the effect of signing the consent.
6. Ms N stated that she was offering up her child for adoption because she was currently not in a position to raise another child. On August 14, 2018 the child was admitted to New Life Home Trust – Kilimani, for care and protection awaiting committal. On October 16, 2018 D the biological mother of the child signed the final consent.
7. On January 29, 2018 the Sub- County Children Officer from Westlands Sub County Mr Comfort K Gachoki wrote a letter requesting the Court to commit baby P to the care of New Life Home Trust for a period of three years. The infant was committed to House of Charity for Care and Protection at the Nairobi Children's Court on March 6, 2019 vide Protection and Care Case Number 481 of 2019. On October 16, 2018 the biological mother signed the final consent. The Case Committee agreed that the child is in need of love, care and protection and that the adoption would be in the best interest of the child. The Case committee of KKPI Adoption Society in a meeting held on November 15, 2019 declared baby P available for adoption vide Certificate declaring a child free for adoption Serial No 781.
8. The following documents were availed from KKPI Adoption Society for baby PM. Admission form to New Life Home TrustLetter giving up child from the biological motherForm for social enquiry for mother offerMs DN of ID No xxxxThe Children's Department letter dated January 29, 2019Philips birth notification serial No xxxxCourt committal order dated 6/03/2019Final consent dated October 16, 2019Discharge summary form Mbagathi Hospital.
9. Pursuant to section 185 (2) (b) of the [Children Act, 2022](#), the Kenya Children's Home Adoption Society, KKPI, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services, and this report was similarly in favor of the proposed adoption. The *guardian ad litem*, FKM also filed the statutory report in which he noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
10. The Kenya Children's Home Adoption Society ,KKPI, filed their report dated August 16, 2022. Ms JW an Administrator from KKPI Adoption Society appeared in Court on 9/02/2023 in respect of this Adoption. The Officer told the Court how the adoptive parents (applicants) approached the Adoption Society with intention to adopt a child. The applicants were taken through the process and the Case Committee approved the same. The child subject of these proceedings was offered for adoption by the mother and subsequently committed to New Life Trust Nairobi's Home for Care and Protection Case No 481 of 2019 Children' Court. Baby P was declared free for adoption vide Certificate declaring the



- child free for adoption Serial No.xxx. The applicants were placed with the minor for fostering. The final visit was done in May, 2022 and it was found that the child and the applicants bonded well and the applicants allowed to start the adoption process.
11. The Agency report contains family and professional background information of the Child's Adoptive Parents. The Applicants were taken through the relevant interviews, a home assessment was carried out as well as the pre –placement counselling. The Applicants married customarily in 1992 and later solemnized their marriage through the AG in 1998. They have one biological daughter by the name RK born on February 15, 1995 and is already married with children. She consented in writing towards the adoption. The Applicants live in a two- bedroomed house. They are financially and economically stable with a monthly gross income of Kshs 30,000/-. Their expenses amount to about Kshs 19,000/-. The Applicants are of good health vide the medical report annexed hereto. The extended family is supportive of the adoption and they have appointed CKM (1<sup>st</sup> applicant's younger sister) to be the legal guardian of the child. On observation during the interview sessions and prior meetings it was observed that the applicants and the minor have bonded well with the minor. The Adoption Society recommend Adoption.
  12. The Director of Children Services through a Report dated January 17, 2023 in respect of the proposed adoption of the child by the Applicants was prepared by Ms. Emily Kimanzi, Machakos Sub County Children Officer. Emily Kimanzi Machakos Sub- County Children's officer appeared in Court on 9/02/2023 in respect of these proceedings and stated that the Applicants have been married for many years. They have 1 daughter RK who is married with 3 children. During the home visit the officer found that the child bonded well with the Applicants and their grandchildren as well as the grandmother.
  13. The Applicants live in their own home built on a 2 acres piece of land where they practice farming and also rear chicken. They use solar for lighting and harvest rain water. The 1<sup>st</sup> applicant uses his Mitsubishi vehicle to earn a living. The minor is accepted by the extended family. The Applicants are desirous to have a male child and an heir of their estate and share their lives with a needy child hence their motivation towards this adoption. The applicants biological daughter RK is excited to have a young brother. She has bonded well with the minor. The adoption was recommended.
  14. The *guardian ad litem*, FKM ID No xxxx filed her Report on dated February 9, 2023 in support of these Adoption proceedings. She stated that she has known the Applicants for a period of over 20 years. That she visited the family and observed that the child interacted well with the Applicants. That the minor has already joined school at [particulars Withheld] Primary School and is currently in PP2. That the immediate and extended family have fully welcomed the minor as part of the family. The Guardian Ad litem recommended the adoption.
  15. The Legal Guardians CKM ID No xxxx and RMK ID No xxxx filed their Report dated February 7, 2023 in support of these proceedings and stated that they understand their role as legal guardians in case of any eventuality.
  16. All the statutory reports that have been filed in respect of the proposed adoption of the child by the applicants have recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
  17. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children's Services established that the Applicants are financially and socially stable and have emotional capability to provide for the upkeep and education of the child and give parental care.



18. The court finds that these are special circumstances that allow for an adoption order to be made in favor of the applicants. The child needs alternative care and parental attention in a family environment and the Applicants are the available family willing to foster care and nurture him.
19. The court observed the applicants with the child in court and it was evident that in the period that the applicants have had the custody of the child, the child has bonded well. The child considers the applicants to be his parents.

### **Disposition**

20. 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.
21. The applicants, PMK and FKM are hereby allowed to adopt Baby PM.
22. Henceforth, the child shall be known as SMM.
23. The child's date of birth is August 10, 2018 and the place of birth shall be Nairobi County.
24. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
25. CKM and RMK shall be the legal guardians of the child should such eventuality arise.
26. This court directs the Registrar General to duly enter this order in the Adoption Register.
27. That the Directorate of Children Services shall 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 interests of the child under section 8 of [Children Act, 2022](#).
28. The *guardian ad litem* is hereby discharged.
29. It is so ordered.

**DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 28<sup>TH</sup> DAY OF MARCH, 2023 (PHYSICAL/VIRTUAL CONFERENCE).**

**MW MUIGAI**

**JUDGE**

**In The Presence Of:**

No appearance - for the applicants

Geoffrey/Patrick - Court Assistant(s)

