



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Baby K (Adoption Cause E007 of 2022)
[2023] KEHC 2488 (KLR) (27 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2488 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E007 OF 2022**

G MUTAI, J

MARCH 27, 2023

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION
OF BABY K BY WML AND LRT – THE JOINT APPLICANTS**

IN THE MATTER OF

WML 1ST APPLICANT

LRT 2ND APPLICANT

JUDGMENT

1. The applicants, WML and LRT, filed the Originating Summons dated 22nd April, 2022 on 4th May, 2022. The said Originating Summons is expressed to be brought under section 154 of the *Children Act*, 2001, Act No. 8 of 2001. The applicants seek the following orders:-
 - a. That the Director of Children Services be ordered to conduct investigations as to the suitability of the applicants to adopt Baby K;
 - b. That the applicants be authorised to adopt baby K;
 - c. That the records at the Registrar of Births and Deaths be rectified and the minor herein be issued with a birth certificate in the name ALM; and
 - d. The Registrar General be ordered to make appropriate entries in the Adopted Children's Register in respect of ALM.
2. The applicants annexed to their application supporting affidavits and reports which the court has had the benefit of looking at in detail. I shall refer to the said documents in the succeeding paragraphs of this judgement.
3. The applicants also filed a Chamber Summons application dated 22nd April, 2022 vide which they sought to have JMM, a male adult kenyan citizen residing in Mombasa, appointed as the guardian-ad-litem in respect of this adoption cause, and for JMM, upon his appointment, to prepare a statutory



report in terms of Rule 9 of the Adoption Rules and to submit the same within 14 days to the Deputy Registrar of this Court.

4. The Chamber Summons application aforesaid also sought an order compelling Director of Children Services, through the Children Department, Mombasa County to make a home visit and to prepare the relevant social enquiry in respect of this adoption and to submit the same to the Deputy Registrar within a similar period of 14 days.
5. The said Chamber Summons application came up for hearing on 20th July, 2022. The proposed guardian-ad-litem testified before the court and affirmed that he would be the eye of the court and protect the interest of the child during the adoption process. Being satisfied that he was suitable the court issued an order appointing JMM as the guardian-ad-litem and directed him to prepare a social enquiry report within 30 days thereof. The Director of Children Services was also ordered to prepare and file his report within 30 days. Hearing of the Originating Summons was fixed for 12th October, 2022. It wasn't heard on the said. On the 23rd March, 2023 this cause proceeded before me. 5 witnesses testified in support of the application.

Factual Background

6. The 1st applicant, WML, was born in Rabai, Kilifi County in 1962. His wife, the second applicant herein, LRT, was born in 1966. The two got married on 20th August, 1994 at St. Michael's Catholic Church, [Particulars withheld]. The 1st Applicant is a retired [Particulars withheld] officer currently self-employed as businessman. The 2nd applicant is a teacher currently teaching at [Particulars withheld] Academy, where she has taught since 2014. She was born in 1968. They do not have children of their own. Although the 2nd applicant got pregnant on one occasion they had a still birth. As a result of recurrent fibroids the 2nd applicant underwent hysterectomy in 2011. From the reports in the file the applicants are in a happy marriage notwithstanding their inability to have children of their own and are very committed to each other. Through this adoption they hope to experience the joys of parenthood and to have a complete family. They are financially stable and live in their own house. The proposed adoption has the support of the members of their families.
7. The applicants desire to bring up Baby K as a Christian and hope to nurture him into a fulfilled and responsible Christian adult. It would appear that they are very committed to the goal and have the means to attain it.
8. In support of the application they produced their personal identification documents, certificates of good conduct and evidence of their ability to take care of Baby K.
9. Regarding Baby K documents filed in this court show that he was born on 11th July, 2014 at the Pumwani Maternity Hospital. The mother abandoned him at birth, by absconding from the postnatal ward, and not returning to claim him. The matter was reported to the Shauri Moyo Police Station vide OB/No.xx/xx/7/2014. Baby K was thereafter released to the Child Welfare Society of Kenya for purposes of temporary placement. The Child Welfare Society of Kenya placed the child at Imani Children's Home on 15th August, 2014.
10. Efforts to trace the parent(s) of the child were unsuccessful. I have seen three print media advertisements, in the Sunday Nation editions of 19th October, 2014, 8th March, 2015 and 10th May, 2015. The police were also unable to trace the parents of the child and subsequently closed their file. The child remained in the actual custody of Imani Children's Home until he was placed with the applicants on 1st February, 2016. I have seen the Foster Care Agreement vide which that was done.



11. Baby K was committed to the Imani Children Home for a period of 3 years vide an order issued on the 22nd September, 2015 by the Senior Resident Magistrate, Makadara Law Courts in CCP 171 of 2015.
12. The adoption agency in this matter declared the child free for adoption vide a certificate issued on 10th April, 2018 (serial No. xxxx).
13. The child was placed with the applicants in 2016. The applicants and the child have bonded well. Baby K attends [Particulars withheld] Academy, where the 2nd Applicant teaches. As at 7th February, 2022 he was in Grade 1 at the said institution.
14. I have seen the reports of the County Children Coordinator dated 19th October, 2022 and filed in court on 24th October, 2022 and that of the guardian-ad-litem dated and filed on 21st July, 2022. The two reports are unanimous that the adoption of Baby K by the applicants would be in the best interest of the child.
15. As earlier stated the main Originating Summons was heard on 23rd March, 2023 when FN of the Child Welfare Society of Kenya testified. He supported the proposed adoption and produced the initial report, the certificate vide which the child was declared as being free for adoption and a further report of 7th February, 2022. The applicants' second witness was SO. She is the sister of the 1st applicant. SO is the proposed legal guardian. She expressed her readiness to be the legal guardian and was very enthusiastic in her support for the proposed adoption. The 3rd witness was KNM of the County Children Department. KNM though supportive of the adoption expressed concerns about the status of the Child Welfare Society of Kenya which body was not, in her view, a registered adoption society in 2018. The applicants also testified as the 4th and 5th witnesses.
16. The applicants testified that they both understood the effect of the issuance of the adoption order. They confirmed that they know that it is of permanent nature and thus irreversible even if the child being adopted becomes difficult later on. They affirmed their readiness to take care of him to the best of their ability and to raise him up in a loving way in a Christian home.
17. I have seen the report of the guardian-ad-litem dated 21st July, 2022. The adoptive parents, it is noted in the said report are financially stable and live in a secure and child friendly environment which is conducive for bringing up morally and spiritually upright children.

The law

18. Part XIV of the *Children Act*, 2022 makes provision regarding adoption. I shall refer to the portions of the said part which are relevant to this cause. Section 185 (4) (b) provides that “the following children shall be eligible for adoption, (b) a child who has been abandoned or whose parents or guardian’s whereabouts cannot be traced within a period of 1 years”. Evidence which has been produced before this court confirm that the child was abandoned. I have also seen the certificate declaring the child as being free for adoption.
19. Section 186 (2) of the Act provides that “the court shall not make an adoption order in any case unless (a) the applicant has attained the age of twenty-five years but is not above the age of sixty-five years, and (b) the applicant, or both applicants in a joint application, is more than twenty-one years older than the child”.
20. From the foregoing both applicants are qualified to adopt Baby K as they fall within the legal threshold.
21. Section 187 of the Act gives the court power to dispense with the consent of the parents of the adoptive parents in certain circumstances. One such circumstance is where the child was abandoned. I have seen



the documents that were produced before me. The inescapable conclusion I draw is that Baby K was abandoned. That being the case I dispense the requirement for parental consent.

22. What is in the best interest of Baby K? A child requires a safe secure environment and loving and understanding parents. A child also need education and health care. From the reports I have seen the applicants love Baby K immensely. I had the opportunity of seeing them interact when the matter was before me for hearing. Baby K was very playful. He was at ease in the company of the applicants. The 2nd applicant is a teacher of children of tender years. With her background she will be able to mould the child very well. I am certain that with the applicants taking care of him Baby K will no doubt grow up into a mature and responsible adult. I therefore find and hold that the proposed adoption is the best interest of Baby K.

Disposition

23. Based on the foregoing I make the following orders: -
- a. I hereby authorize WML and LRT to adopt Baby K;
 - b. I order that the records at the Registrar of Births and Deaths be rectified and that the minor herein be issued with a birth certificate in the name of ALM and that his date of birth be deemed as being 11th July, 2014;
 - c. I further order that the Registrar General be ordered to make appropriate entry in the Adopted Children Register in respect of ALM;
 - d. I appoint SAO as the legal guardian of ALM; and
 - e. I declare that ALM is a Kenyan citizen by birth.

DATED SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 27TH DAY OF MARCH, 2023.

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GREGORY MUTAI

JUDGE

In the presence of: -

Winnie Migot – Court Assistant

Mr. Obara for the Applicants (present via Microsoft Teams)

