



**In re Baby DM (Minor) (Adoption Cause 05 of 2022)
[2023] KEHC 17763 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 05 OF 2022**

G MUTAI, J

APRIL 28, 2023

IN THE MATTER OF THE CHILDREN ACT, NO. 8 OF 2001

AND

IN THE MATTER OF BABY DM (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION

IN THE MATTER OF

JSKW 1ST APPLICANT

JWM 2ND APPLICANT

JUDGMENT

1. The Applicants herein moved this Honourable Court vide Originating Summons dated February 22, 2022 seeking orders that: -
 - a. That the Director of Children Services be ordered to conduct investigations as to the suitability of the Applicants to adopt Baby DM ;
 - b. That the Applicants be authorized to adopt Baby DM , a minor;
 - 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 of VKK ; and
 - d. That the Registrar General be ordered to make appropriate entries in the Adopted Children's Register in respect of VKK .
2. The Originating Summons is supported by the averments in the statement in support thereof sworn on February 22, 2022. The applicants are adult Kenyan citizen born in 1958 and 1964 respectively.



They are married to each other with no children of their own. The motivation to adopt the baby has been ignited by the desire to nurture a child as they are not able to have biological children.

3. The 1st Applicant is a retired teacher and pastor at [Particulars withheld] with a monthly pension of Kes 43,000.00 while the 2nd Applicant is a teacher at [Particulars withheld] Girls Secondary School with a monthly salary of Kes 86,000.00. They also have a Tuk Tuk that earns them an estimated monthly income of Kes 20,000.00 and shops that they have rented out which earns them estimated income of Kes 32,000.00 per month, a 5 acre piece of land in [Particulars withheld] which has a 3 bedroomed house, a house in Vikwatani which is their home and a Toyota Passo for personal use.
4. Regarding the child he is estimated to have been born on July 31, 2019. The child was abandoned in Naivasha Sub-County Hospital on August 1, 2019 by his mother Monica Wanjiru. The matter was reported at Naivasha Police Post on August 19, 2019 vide OB NO 61/19/xx/2019. He was committed into the legal custody of New Life Home Trust by the Children's Court Naivasha vide Care and Protection Case No 106 of 2019.
5. Change Trust, a certified adoption society, in its meeting held on June 4, 2021 declared the child free for adoption and a Certificate S/No xxxx was issued. Subsequently, the child was placed in the care of the Applicants on August 10, 2021.
6. Upon instituting these proceedings, Anderson Tuva Ngala was on July 20, 2022 appointed the guardian-*ad-litem* pursuant to Chamber Summons Application dated April 22, 2022. The Director of Children Services and the guardian *ad litem* were directed to file their respective social inquiry and assessment reports within 30 days.
7. Preceding the hearing, the Director Children Services through the County Coordinator for Children Services filed his report dated September 23, 2022 recommending the adoption. Equally the guardian-*ad-litem* filed his report dated July 21, 2022 vide which he also recommending the adoption.
8. During the hearing the Applicants urged the court to allow the application to enable them adopt the baby and stated that they understood the consequences of adoption and that adoption is permanent.
9. I have considered the application herein, materials in support thereof and the evidence by various witnesses. My humble duty is to ascertain from the available evidence whether the minor is available for adoption, the Applicants are fit to adopt him and most importantly whether the adoption is in his best interest.
10. The minor herein was abandoned at the Naivasha Sub County Hospital on August 1 2019. The matter was reported at Naivasha Police Post on August 19, 2019 vide OB NO 61/19/xx/2019. He was committed into the legal custody of New Life Home Trust by the Children's Court Naivasha vide Care and Protection Case No xxx of 2019.
11. Regarding the baby's nationality, it is clear the baby was abandoned in Naivasha Sub County Hospital within the Republic of Kenya. Article 14(4) of the [Constitution](#) of Kenya, 2010 recognizes that a child who is less than 8 years of age, and whose nationality and parentage is not known, is presumed to be a Kenyan citizen by birth. In view of this provision the child herein is presumed to be Kenyan citizen by birth.
12. The subject child is above 6 weeks and below 18 years. Section 157 of the [Children Act](#) states that any child who is resident in Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt that the child is fit for adoption.



13. The court is required to assess the suitability of the adoptive parents and in this case the Applicants are Kenyan citizens thus qualifying the adoption to be a local one. They are 65 and 59 years respectively which places them under the age bracket of not less than 25 years or more than 65 (section 158 of the [Children Act](#)).
14. [In re B \(BABY\)](#) [2018] eKLR, Nyakundi, J stated that, “that law presumes that by granting foster care the adoptive parties will provide and promote a stable, supportive and nurturing environment for the child...”.
15. The Applicants are financially stable. They have monthly incomes of Kes 43,000.00 and Kes 86,000.00 respectively. They also have a Tuk Tuk that earns them an estimated monthly income of Kes 20,000.00 and shops that they have rented out which earns them estimated income of Kes 32,000.00, a 5-acre piece of land in [Particulars withheld] which has a 3 bedroomed house, a house in [Particulars withheld] which is their home and a Toyota Passo for personal use. In my humble opinion the incomes they get and the properties they have are sufficient to bring up the minor comfortably. I note that they are a caring, loving and happy Christian couple with no criminal record.
16. Since the placement of the minor in into their custody on August 10, 2021 the child has fully bonded with them. They also understand the consequences of adoption and that it is permanent. They appreciate the role of parents and admit they will treat the minor like their biological child. They are dedicated to providing a suitable family environment so that the minor can thrive and become fruitful member of the society. I have no doubt that they have met the necessary requirements to adopt the minor and that they will provide and promote a stable, supportive and nurturing environment for him.
17. On the question of whether the adoption is in the best interests of the baby, guidance can be drawn from article 53(2) of the [Constitution](#) of Kenya, 2010 and section 4(2) and (3) of the [Children’s Act](#) both of which state that the best interests of a child is the principal/primary consideration before making any decision concerning a child. Therefore, I am of the view that the adoption is in the best interest of the baby.
18. The child herein was abandoned and nobody has come forward to claim him. He is like any other child in need of parental care and guidance. He needs basic necessities like food, shelter, education and clothing. He has fully integrated with the Applicants. I am satisfied that this adoption is certainly in his best interests and therefore allow the application. I am guided by the case of [In re R \(Child\)](#) [2021] eKLR where the court stated that, “this is a child who was abandoned at birth. He faced an uncertain future in Children’s Homes and institutions. This adoption affords the child the opportunity to be raised in a loving and secure home environment.”
19. Accordingly, the Originating Summons is allowed with orders that: -
 - a. Baby DM (Minor) is declared a Kenyan citizen by birth;
 - b. The consent of biological parents is dispensed with;
 - c. The Applicants JSKW And JWM are hereby authorized to adopt Baby DM (Minor) who shall henceforth be known as VKK ;
 - d. Nashon Ngei Wambua is hereby appointed Legal Guardian of VKK ;
 - e. The Registrar General is directed to record the Adoption Order, and the birth date of VKK as being July 31, 2019, in the Adopted Children’s Register.
 - f. The guardian *ad litem* is discharged.



**DELIVERED, DATED AND SIGNED IN MOMBASA THIS 28TH DAY OF APRIL 2023 VIA
MICROSOFT TEAMS**

GREGORY MUTAI

JUDGE

In the presence of: -

Applicants absent

Winnie Migot - Court Assistant

