



**In re Baby MD aka HDK (Adoption Cause 20 of 2022)  
[2023] KEHC 17762 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17762 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE 20 OF 2022  
G MUTAI, J  
APRIL 28, 2023  
IN THE MATTER OF THE CHILDREN ACT, NO. 29 OF 2022  
AND  
IN THE MATTER OF BABY MD AKA HDK  
AND  
IN THE MATTER OF THE APPLICATION FOR ORDERS  
OF ADOPTION OF BABY MD AKA HDK BY LKK**

**BETWEEN**

**LKB-K ..... APPLICANT**

**AND**

**KKPI ADOPTION SOCIETY ..... RESPONDENT**

**JUDGMENT**

1. LKB-K, the Applicant herein moved this Honourable Court vide Originating Summons dated October 24, 2022 seeking the following orders: -
  - a. That LKB-K be authorized to adopt Baby MD aka HDK the minor child;
  - b. That the child Baby MD aka HDK is a Kenyan citizen;
  - c. That the name of Baby MD to change to HDK;
  - d. That the Registrar General be directed to enter the name child in the Adopted Children Register in the prescribed form and to issue a certificate to that effect;
  - e. That the Director of Immigration do issue the minor child with a Kenyan passport upon application;



- f. That BBS be appointed as the Legal Guardian;
  - g. That the Honourable Court be pleased to make any other orders it deems fit and appropriate; and
  - h. That costs of this Summons be costs in the cause.
2. The application is supported by the averments in the statement in support thereof sworn on October 24, 2022. The Applicant is an adult Kenyan citizen born in 1985. She is married to AKK who has given his consent to this adoption. She doesn't have children of her own hence this application. She desires to be a mother and to nurture a child as she is not able to have biological children of her own due to health problems.
  3. The Applicant is a businesswoman within Mtwapa with an income of Kes 132,000.00 per month.
  4. Regarding the child, she is estimated have been born on October 21, 2020. The mother of the child, an unknown young girl, abandoned her by leaving the baby in the hands of Ms PA on October 21, 2020 on the pretext that she was going to relieve herself but never came back. The matter was reported at Korogocho Police Post vide OB No 24/xx/xx/2020. She was committed into the legal custody of Happy Life Children Home by the Children's Court Nairobi vide Care and Protection Cause No 343 of 2020.
  5. Kenyans to Kenyans Peace Initiative (KKPI), a registered adoption society, in its meeting held on November 3, 2021, declared the child free for adoption and a Certificate Serial No xxx was accordingly issued. Subsequently, the child was placed on the care of the Applicant on June 26, 2021.
  6. Upon instituting these proceedings, MKW was on November 28, 2022 appointed the guardian *ad litem* pursuant to Chamber Summons Application dated October 24, 2022. The Director of Children Services and 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 Kilifi County filed his report dated March 16, 2023 recommending the adoption. Equally the guard *ad litem* filed his report dated February 15, 2023 recommending the adoption.
  8. During the hearing the applicant urged the court to allow the application to enable her adopt the baby and stated that she understood the consequences of adoption and that it is permanent.
  9. I have considered the application herein, materials in support and evidence by various witnesses. I am now tasked to determine the following issues; whether the baby is available for adoption, whether the Applicant is fit to adopt the baby and most importantly whether the adoption is in the best of the child.
  10. The baby herein was abandoned with one Ms PA by a young girl on October 21, 2020. The matter was reported at Korogocho Police Post vide OB No 24/xx/xx/2020. She was committed into the legal custody of Happy Life Children Home by the Children's Court Nairobi vide Care and Protection Cause No 343 of 2020. Article 14(4) of the [Constitution of Kenya, 2010](#) states that a child who is less than 8 years of age, and whose nationality and parentage are 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.
  11. The subject child is above 6 weeks which provision falls within the age bracket of any adoptive baby pursuant to Section 184 of the [Children's Act 2022](#). Further Section 185 does recognizes that any child who is resident in Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt the child is fit for adoption.



12. The court is required to assess the suitability of the adoptive parent and in this case the Applicant is a Kenyan citizen thus qualifying the adoption to be a local one. She is 38 years which places her under the age bracket of not less than 25 years nor more than 65 years for an adoptive parent in compliance with Section 186(2) of the [Children's Act, 2022](#).
13. She has been described as financially stable as she is a businesswoman in Mtwapa with an estimated monthly income of Kes 132,000.00. She also has enough resources and family support to take care of the child. She appears to me to be a caring, loving and Christian woman with no criminal record.
14. Since the placement of the minor on into her custody on 26/6/2021 the child has fully bonded with her. She also understands the consequences of adoption and that it is permanent. She appreciates the role of a parent and admit she will treat the baby like her biological child. She is dedicated to providing suitable familiar environment so that the child can thrive and become fruitful member of the society. Therefore, I have no doubt that she has met the necessary requirements to adopt the baby and that she will provide and promote a stable, supportive and nurturing environment for the baby. I am guided by the case of [In re JNA](#)[2018] eKLR where LA Achode, J stated that:-

“I have perused the entire record and find that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought”.
15. On the question of whether the adoption is in the best interests of the baby, I am guided by Article 53(2) of the [Constitution of Kenya, 2010](#) and Section 8 (1) and (2) of The [Children Act, 2022](#) both of which provide that the best interests of a child principal is the primary consideration before making any decision concerning a baby. Therefore, I am of the view that the adoption is in the best interest of the baby.
16. The child herein was abandoned and nobody has come forward to claim her. She is like any other child in need of parental care and guidance. She needs basic necessities like food, shelter, education and clothing. During the course of the hearing I noted that the child enjoys a close bond with the Applicant. I am satisfied that this adoption is in the best interests of the child and therefore allow the application.
17. I am also guided by the case of [In re HN \(Baby\)](#) [2020] eKLR where the court stated: -

“As to whether the adoption is in the best interests of the baby, the cardinal requirement enshrined under Article 53(2) of the Constitution and Section 4(2) and (3) of the Children's Act is the consideration of the best interests of a child before making any decision affecting the affairs of a child. Considering that the minor was abandoned and has no known relative/ s, it will be in her best interest that she gets a home and parents she can refer to as father and mom.”
18. Accordingly, the Originating Summons is allowed with orders that: -
  - a. Baby MD aka HDK is declared a Kenyan citizen by birth;
  - b. LKB-K, the Applicant, is authorized to adopt Baby MD aka HDK who shall henceforth be known as HDK;
  - c. BBS is hereby appointed as the Legal Guardian of HDK;
  - d. The Registrar General is directed to enter the name of HDK, and her estimated date of birth as being October 21, 2020, in the Adopted Children's Register; and



e. The guardian *ad litem* is discharged.

**DELIVERED, DATED AND SIGNED IN MOMBASA THIS 28<sup>TH</sup> DAY OF APRIL 2023 VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Parties absent

Winnie Migot - Court Assistant

