



REPUBLIC OF KENYA



**In re HCG (Baby) (Adoption Cause E011 of 2022)  
[2023] KEHC 17514 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17514 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E011 OF 2022  
G MUTAI, J  
APRIL 28, 2023  
IN THE MATTER OF THE CHILDREN ACT, 2001  
AND  
IN THE MATTER OF BABY HCG  
AND  
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY HCG  
BETWEEN  
CWM ..... APPLICANT  
AND  
LITTLE ANGELS NETWORK ..... RESPONDENT**

**JUDGMENT**

1. The Applicant herein moved the court vide Originating Summons dated June 21, 2021 seeking the following orders: -
  - a. Pursuant to Article 14(4) of the *Constitution of Kenya, 2010* and section 11 of the *Children Act, 2001*, this Honourable Court be pleased to declare the child Baby HCG a Kenyan citizen by birth;
  - b. Pursuant to provisions of Section 159 of the *Children Act, 2001*, this Honourable Court be pleased to dispense with the requirements of consent to the adoption as required by the provisions of section 158 of the *Children Act, 2001*;
  - c. The Applicant CWM be authorized to adopt Baby HCG ;
  - d. Upon making of the adoption order the child to be known as HNSM ;



- e. Upon the making of the adoption order, DWM And HNW be appointed Legal Guardians of the child as provided for by the provisions of Section 164 of the *Children Act, 2001*;
  - f. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption and the date of birth of the child as February 25, 2020 in the Adopted Children Register as provided for by section 170 of the *Children Act, 2001*;
  - g. The costs of this application be costs in the cause.
2. The application is premised on the statement in support of the application sworn on June 21, 2022.
  3. The applicant is a Kenyan female adult of sound mind currently aged 44 years old. She got married to HMM on December 20, 2003. Her husband died on May 29, 2021. Unfortunately, at the time of the demise of her husband they had not been blessed with a child of their own. Her motivation to adopt the child is ignited by the desire to have a child of her own and also pursue the dream she and her husband had of adopting a child.
  4. The applicant has a good income as she is a businesswoman with a monthly rental income of Kes. 138,000.00 from her rental houses.
  5. The child is estimated to have been born on February 25, 2020 to one IMK who gave her up for adoption. The child was committed to the legal custody of House of Charity Children's Home by the Children's Court at Nairobi vide Protection and Care Cause Number 286 of 2020.
  6. The Case Committee at Little Angels Network in its sitting held on April 8, 2021 considered the matter and declared the child free for adoption. Consequently, Certificate Serial Number xxxx was issued.
  7. Preceding the hearing the court appointed Linda Kaari Wahinya guardian ad litem and ordered her, and the County Director of Children Services to file their social inquiry report within 30 days.
  8. The guardian ad litem and the Director of Children Services filed their reports on October 16, 2022 and November 1, 2022 respectively recommending the adoption.
  9. During the hearing the applicant urged the court to allow the application and informed the court that she was aware of the consequences of adoption.
  10. Have considered the application and the issues for determination are:
    - a. Whether the child is suitable for adoption
    - b. Whether the applicant is suitable to adopt the child
    - c. Whether the adoption is in the best interest of the child.
  11. On whether the child is suitable for adoption, the child herein is estimated to have been born on February 25, 2020 to one IMK who willingly gave her up for adoption for she was unable to take care of the child due to the fact that she is a single mother of six children and the subject herein was the seventh. The father of the child herein deserted her after learning of her pregnancy. At the time she gave up the child she was unemployed. The biological mother gave up the child for adoption willingly and signed a consent on February 26, 2020 with Little Angels Network and as a result the child was placed in the legal custody of the House of Charity Children's Home by the Children's Court at Nairobi vide Protection and Care Cause Number 286/2020.
  12. The subject child was born at St. Ann's Hospital in Kabiria to one IMK who is a Kenyan citizen and currently staying with the Applicant at AM, Mombasa within the Republic of Kenya. The Article 14(1)



of the *Constitution of Kenya, 2010* provides that “a person is a citizen by birth if on the day of the person’s birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen”. Therefore, the subject child can only be presumed to be a Kenyan citizen by birth.

13. The child is above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to Section 156 of The *Children’s Act*. Further section 157 does recognize any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. Thus it’s my view that the child is fit for adoption.
14. On whether the applicant is suitable to adopt the child herein, she is a Kenyan citizen thus qualified for this local adoption. She is 44 years of age which places her in the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with section 158 of The *Children’s Act*. The applicant has been described as financially stable as she has assets as indicated in the report of the Director of Children Services. She is caring, loving and Christian woman with no criminal record. Since the placement of the child in her custody the child has fully bonded with her. The Applicant understands the consequences of the adoption order and that it is permanent. She appreciates the role of a parent and affirmed during the hearing that she will take care of the child as her biological child. It’s my view that the applicant has met the necessary requirements to adopt the baby.
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* and section 4(2) and (3) of The *Children’s Act* which underscores the best interests of a child principal/primary consideration before making any decision concerning a baby.
16. I am also guided by the persuasive decision of Nyakundi, J in the case of *In re B (Baby)* [2018] eKLR where he stated that, “the purpose of Kenya’s Constitution and Children’s Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in every adoption cause is provision of the best interest of that very child... It is that family unit that the constitution contemplates under Article 45 which also has to take responsibilities in fulfilling the obligations enjoined in Article 53 of the same *Constitution*.”
17. The child herein was surrendered willingly for adoption by her mother Irene Mkawughanga Kwida. She is like any other child in need of parental care and guidance. She needs basic necessities like food, shelter, education and clothing. She has fully integrated with the Applicant. It is obviously in the best interests of the child that this adoption application be allowed.
18. Accordingly, the application is allowed with orders that:
  - a. Baby HCG is declared a Kenyan citizen by birth;
  - b. The consent of biological father of Baby HCG is dispensed with;
  - c. CWM is authorized to adopt Baby HCG who shall henceforth be known as HNSM ;
  - d. The Registrar General is directed to make an entry recording the adoption order herein, and the estimated birth date of the HNSM as February 25, 2020 in the Adopted Children’s Register; and
  - e. The *guardian-ad-litem*{term{refersTo }} is discharged.

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

**GREGORY MUTAI**

**JUDGE**

In the presence of: -



Ms. Mango holding brief for Ms.Ngugi for the Applicant.

Winnie Migot - Court Assistant

