



**In re KK (Child) (Adoption Cause E012 of 2022)
[2023] KEHC 17536 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17536 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E012 OF 2022
G MUTAI, J
APRIL 28, 2023
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF ABANDONED CHILD ALIAS KK (THE CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS
OF ADOPTION OF ABANDONED CHILD ALIAS KK
BETWEEN
CNM APPLICANT
AND
LITTLE ANGELS NETWORK RESPONDENT**

JUDGMENT

1. The Applicant herein moved this Honourable Court vide Originating Summons dated July 5, 2022 seeking for orders that:-
 - 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 Abandoned Child Alias KK (the child) as a Kenyan citizen by birth;
 - b. Pursuant to the provisions of section 159 of the [Children Act, 2001](#), this Honourable Court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of section 158 of the Children Act, 2001;
 - c. The Applicant CNM be authorized to adopt Abandoned Child Alias KK ;
 - d. Upon the making of the adoption order, the child to be known as HKZ ;



- e. Upon making the adoption order, CMM & MK 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 estimated date of birth of the child as October 6, 2019 in the Adopted Children Register as provided for by section 170 of the *Children Act, 2001*; and
 - g. The costs of this application be costs in the cause.
2. The application is supported by the averments in the statement in support thereof sworn on July 5, 2021. The Applicant is an adult Kenyan citizen born in 1990. She is single, doesn't have children of her own and has never been married. The motivation to adopt the baby has been ignited by the desire to be a mother and to nurture a child as she is not able to have biological children due to ovarian digenesis.
 3. The Applicant is a teacher with an income of Kshs 18,000 per month.
 4. Regarding the child estimated to be born on October 6, 2019. She was found abandoned at Bamburi Junction and rescued by well-wishers on October 7, 2019. The matter was reported at Bamburi Police Station on the same day vide OB No 04/xx/xx/xxxx. The child was taken to Yeshua Medicare for medical evaluation and care and protection. She was committed into the legal custody of Baby Life Rescue Centre by the Children Court Tononoka vide Care and Protection No 33 of xxxx.
 5. Little Angels Network in its meeting held on June 3, 2021 declared the child free for adoption and a Certificate S/No 00xxxx thereof was issued. Subsequently, the child was placed in the care of the Applicant on June 26, 2021.
 6. Upon instituting these proceedings, JSB was on September 21, 2022 appointed by this court as the guardian ad litem pursuant to Chamber Summons Application dated July 5, 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 Kwale County filed his report dated March 15, 2023 recommending the adoption. Equally the guard ad litem filed her report dated October 13, 2022 recommending the adoption.
 8. During the hearing the Applicant urged the court to allow the application to enable her adopt the child and stated that she understood the consequences of adoption and its permanent nature.
 9. I have considered the application herein, the materials in support thereof and evidence adduced 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 proposed adoption is in the best of the child.
 10. The baby herein was found abandoned at Bamburi Junction by one Esther Katana. The matter was reported at Bamburi Police Station on the same day vide OB No 04/7/xx/xxxx. The child was taken to Yeshua Medicare for medical evaluation. She was committed into the legal custody of Baby Life Rescue Centre by the Senior Resident Magistrate, Tononoka vide Care and Protection Cause No 33 of xxxx.
 11. Regarding the baby's nationality, it is clear the baby was found abandoned at Bamburi Junction, Mombasa County within the Republic of Kenya. the *Constitution of Kenya, 2010*, in Article 14(4) thereof 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 a Kenyan citizen by birth.



12. The subject 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 Act 2001*(repealed). Further section 157 does recognize any child who is resident in Kenya whether born in Kenya or not, to be eligible for adoption. I have no doubt the child is fit for adoption.
13. The court is required to assess the suitability of the adoptive parent and in this case the Applicant is a Kenyan citizen. She is thus qualified. She is 33 old years which places her under 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 Act 2001*(repealed).
14. She has been described as financially stable as she is a teacher in Ukunda with an estimated monthly income of KES 18000.00. She has enough resources necessary for the family support. She is caring, loving Christian woman with no criminal record.
15. Since the placement of the minor on into her custody on June 26, 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 did affirm under oath that she will treat the baby like her biological child. She is dedicated to providing suitable 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 L.A.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”.
16. 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 Act 2001*(repealed) 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 child.
17. 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. She has fully integrated with the Applicant. I am satisfied that this adoption is in her best interests and therefore allow the application.
18. 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 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 mother.”
19. Accordingly, the Originating Summons is allowed with orders that: -
 - a. Abandoned Child Alias KK is declared a Kenyan citizen by birth;
 - b. The consent of the biological parents of the child is hereby dispensed with;



- c. The Applicant CNM is authorized to adopt Abandoned Child Alias KK who shall henceforth be known as HKZ ;
- d. CMM and MK are hereby appointed Legal Guardians of HKZ ;
- e. The Registrar General is directed to make an entry, recording the adoption order herein and the date of birth of the child as October 6, 2019, in the Adopted Children Register; and
- f. The *guardian ad litem* is discharged.

DELIVERED, DATED AND SIGNED IN MOMBASA THIS 28TH 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

