



**In re MP (Child) (Adoption Cause E016 of 2022)
[2023] KEHC 17765 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E016 OF 2022
G MUTAI, J
APRIL 28, 2023
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF ABANDONED BABY BOY ALIAS MP (THE CHILD)
IN THE MATTER OF AN APPLICATION FOR ORDERS OF
ADOPTION OF ABANDONED BABY BOY ALIAS MP BY JNK AND EMN**

BETWEEN

JNK 1ST APPLICANT

EMN 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The Joint Applicants herein moved this Honourable Court vide Originating Summons dated August 19, 2022 seeking 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 the child Baby Boy alias MP 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 Joint Applicants JNK and EMN be authorized to adopt Baby Boy alias MP ;



- d. Upon the making of the adoption order, the child to be known as MFN ;
 - e. Upon the making of the adoption order, TMK and EMM 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 4, 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 Originating Summons is supported by the averments in the statement in support thereof sworn on August 19, 2022. The Joint Applicants are adult Kenyan citizens born in 1973 and 1975 respectively. They are married to each other and are blessed with one child namely VMN aged 17 years. The motivation to adopt the baby has been ignited by the desire to build and expand their family and for their son to have a sibling hence this adoption proceeding.
 3. Regarding their occupation, the 1st Applicant is a teacher/Deputy Principal at [particulars withheld] while the 2nd Applicant is an employee at the Ministry of Agriculture. They both have a monthly income of Kes 150,000.00 and Kes 204,000.00, respectively, with assets in Makueni County, Machakos County and Mombasa County as well as shares in Mwalimu Sacco Society Limited, insurance covers with Liberty and Britam Insurance Co Ltd, and two cars Toyota Fielder and Toyota Auris.
 4. The child the subject of this adoption application is estimated to have been born on October 4, 2019. He was found abandoned by members of the public namely NB ,WA, MK at Vet Labs in a bush, by the road to Ndumbu-ini. They rescued the child and reported the matter to Kabete Police Station and the same booked as Occurrence Book Number xx/x/xx/2019. The child was committed to the legal custody of House Of Charity Children's Home by the Children's Court Nairobi vide Care and Protection Cause Number E551 of 2021.
 5. In its meeting held on November 3, 2021, the Case Committee of Little Angels Network declared the child free for adoption and a Certificate S/No 002xxx was issued.
 6. Upon instituting these proceedings, LMM was on February 16, 2023 appointed guardian-*ad-litem*. The County Director of Children Services through the Children Department, Mombasa and the said guardian-*ad-litem* were directed to file their respective social inquiry reports within 30 days.
 7. Preceding the hearing, the Director Children Services through the County Children Coordinator Mombasa County filed his report dated March 22, 2023 recommending the adoption. Equally the guardian-*ad-litem* filed her report dated March 13, 2023 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 knew that it is permanent in nature.
 9. I have considered the application herein, materials in support and evidence by various witnesses and the issues that emerge for determination are; whether the baby is available for adoption, whether the applicants are fit to adopt the baby and most importantly whether the adoption is in the best of the child. The application is brought under the repealed [Children's Act 2001](#) whereas it was filed after the commencement of the [Children's Act 2022](#).
 10. I have already set out the circumstances under which the child was found and the orders that the Children Court made. I need not rehash them here.



11. The child was placed with the Joint Applicants on December 27, 2021 who have since played the role of a father and a mother to him since then. Nobody has come forward to claim the child and therefore the need for consent pursuant to section 186(7) and 187 of the *Children's Act* No 29 of 2022 is dispensed with. I am guided by the case of *In re HN (Baby)* [2020] eKLR where the court stated,

“As there is nobody laying claim over the baby, the requirement for consent is hereby dispensed with pursuant to Section 159(1) of the Children's Act. In view of the above consideration, it is my finding that the child is available and suitable for adoption.”

12. Regarding the baby's nationality, it is clear was found abandoned at Vet Labs within the Republic of Kenya. The *Constitution* Article 14(4) recognize 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.

13. In terms of age the child is above 6 weeks which provision falls within the age bracket of any adoptive baby pursuant to Section 184(1) (b) of the *Children's Act, 2022*. Further Section 185 of the *Children Act* 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.

14. Concerning the applicants' suitability, they are Kenyan citizens aged 50 and 48 years respectively which places them under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with Section 186 (2) of the *Children's Act 2022*. The applicants have been described as financially stable as both are employed with good incomes and a reasonable asset portfolio. They have been described as caring, loving and Christians with no criminal record. Since the placement of the minor into their custody the child has fully bonded with them. They also understand the consequences of adoption and that it is permanent. They appreciate the role parents play in the lives of children and admit they will treat the baby herein like their biological child.

15. Consequently, I have no doubt that they have met the necessary requirements to adopt the baby. I am guided by the case of *In re B (Baby)* [2018] eKLR where the court stated: -

“I am of the considered view that weighing all factors and the evidence placed before me the applicants are of sufficient ability to bringing up the child and to furnish her with appropriate support and maintenance within their resource base availed to them.”

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 8(1) and (2) of the *Children's Act* which underscores the best interests of a child principal as the primary consideration before making any decision concerning a child.

17. The child herein was found abandoned at Vet Labs. He needs basic necessities like food, shelter, education and clothing. He has fully integrated with the Applicants. It is obviously in the best interests of the child that this adoption application be allowed. I am guided by the persuasive authority *In re IK (Child)* [2020] eKLR where the court stated: -

“She needs parental care to grow up as a normal child with emotional and physical protection which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and wellbeing of the child. As the Constitution and the law state, in all matters concerning a child, the best interests of the child are paramount.”



18. In allowing the application I am guided by the case of *In re JK* [2021] eKLR where the court stated: -
- “In light of all the foregoing, the Court is of the view that the best interest of the child will be served by issuance of an order of her adoption to and by the applicants.”
19. The circumstances in of *In re JK* [2021] eKLR were similar to those of this case and the court allowed the application for adoption.
20. Accordingly, the application is allowed with orders that:
- a. Abandoned Baby Boy alias MP is declared a Kenyan citizen by birth;
 - b. JNK and EMN are hereby authorized to adopt Abandoned Boy Alias MP who shall henceforth be known as MFN ;
 - c. TMK and EMM are hereby appointed Legal Guardians of MFN ;
 - d. The Registrar General is directed to make an entry recording the adoption, and the estimated date of birth of MFN as being October 4, 2019, in the Adopted Children Register ; and
 - e. 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: -

Ms Mango holding brief for Ms Ngugi for the Applicants

Winnie Migot – Court Assistant

