



**In re Abandoned Baby Boy aka EB (Adoption Cause E010 of 2022)
[2023] KEHC 18531 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18531 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E010 OF 2022
G MUTAI, J
MAY 31, 2023
IN THE MATTER OF THE CHILDREN ACT 2001
AND
IN THE MATTER OF ABANDONED BABY BOY AKA EB
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS OF
ADOPTION OF ABANDONED BABY BOY AKA EB BY
SNW & PMC (THE JOINT APPLICANTS)**

BETWEEN

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SNM 1ST APPLICANT

PMC 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The joint applicants herein moved this honourable court vide originating summons dated June 10, 2022 seeking orders that: -
 - a. Pursuant to Article 14(4) of tyhe Constitution of Kenya 2010 and Section 11 of the Children Act, 2001, this honourable court be pleased to declare the child Abandoned Baby Boy AKA EB 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 applicants SNM and PMC be authorized to adopt Abandoned Baby Boy AKA EB;
 - d. Upon the making of the adoption order, the child to be known as MSJ;
 - e. Upon the making of the adoption order, VOO and LDC 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 26th December 2020 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 June 10, 2022. The applicants are adult Kenyan citizens born in 1977 and 1974 respectively. They are married to each other and not blessed with children of their own. The motivation to adopt the baby has been ignited by the desire to have children of their own hence this adoption proceedings. Regarding their occupation, the applicants are businessman and businesswoman respectively.
 3. Regarding the child estimated to be born on December 26, 2020, he was found abandoned by members of the public at Kianjugu Village in a coffee farm in Murang'a South Sub-County, Mukuyu Division, Murang'a County. The child was rescued by the members of the public and the matter reported at Kiri-miri police post and the same booked on Occurrence Book Number 09/26/12/2020. The child was taken to Maragua Sub-county hospital for medical attention and committed to the legal custody of New Life Home Trust by the Kigumo Children's Court vide Care and Protection Number 7 of 2021.
 4. Consequently, in its meeting held on July 28, 2021, the case committee of Kenya children's home adoption society declared the child free adoption and a Certificate S/No 1625 thereof issued.
 5. Upon instituting these proceedings, MMC was on March 21, 2023 appointed guardian ad litem. The County Director Of Children Services through the Children Department, Mombasa and the guardian ad litem were directed to file their respective social inquiry reports within 30 days.
 6. Preceding the hearing, the Director Children Services through the County Children Coordinator Mombasa County filed his report. Equally the guard ad litem filed her report on April 12, 2022 recommending the adoption.
 7. 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 it is permanent.
 8. 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.
 9. The child is estimated to have been born on December 26, 2020. he was found abandoned by members of the public at Kianjugu Village in a coffee farm in Murang'a South Sub-County, Mukuyu Division, Murang'a County. The child was rescued by the members of the public and the matter reported at Kiri-miri Police Post and the same booked on Occurrence Book Number 09/26/12/2020. The child was taken to Maragua Sub-County Hospital for medical attention and committed to the legal custody



of new life home trust by the Kigumo Children’s Court vide Care and Protection Number 7 of 2021. The child was placed with the applicants on August 20, 2021 who have since played the role of a father and mother to him and has been under their care since he was eight months. Nobody has come forward to claim the child and therefore the need for consent pursuant to section 158 and 159 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.”

10. Regarding the baby’s nationality, it is clear was found abandoned at, Murang’a South Sub-County, Mukuyu Division, Murang’a County within the Republic of Kenya. The *Constitution* in Article 14(4) recognizes that a child who is less than 8 years of age, and whose nationality and parents 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. In terms of age 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. I have no doubt the child is fit for adoption.
12. Concerning the applicants’ suitability, they are Kenyan citizens aged 46 and 49 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 158 of the Children’s Act. The applicants have been described as financially stable as both are businessman and businesswoman. They have been described as caring, loving and Christians couple with no criminal record. Since the placement of the minor into their custody the child has fully bonded. They also understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and admit they will treat the baby like their biological child. Consequently, I have no doubt that they have met the necessary requirements to adopt the baby.
13. 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 of the *Children Act*, 2022 which underscores the best interests of a child principal as the primary consideration before making any decision concerning a baby.
14. The child herein was found abandoned at Murang’a South Sub-County, Mukuyu Division, Murang’a County. She needs basic necessities like food, shelter, education and clothing. She 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 case *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.”

15. 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.”



16. The circumstances in of In re JK [2021] eKLR were similar to those of this case and the court allowed the application for adoption.
17. Accordingly, the application is allowed with orders that:
 - a. The child is declared a Kenyan citizen by birth
 - b. The consent of biological parents or guardians is dispensed with;
 - c. The applicants are authorized to adopt Abandoned Baby Boy AKA EB who shall henceforth be known as MSJ;
 - d. VOO and LDC are hereby appointed legal guardians of the minor in the event of any eventuality befalling the applicant;
 - e. The Registrar General is directed to enter the adoption order in the Adopted Children's Register and the estimated date of birth of the child as being December 26, 2020; and
 - f. The guardian *ad litem* is discharged.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 31ST DAY OF MAY, 2023

GREGORY MUTAI

JUDGE

In the presence of:-

No appearance for the Applicants

Winnie Migot – Court Assistant

