



**In re Baby JA also Known as Unknown Baby B also Known as Abandoned Baby – A Child (Adoption Cause 1 of 2019) [2023] KEHC 18707 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18707 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE 1 OF 2019  
G MUTAI, J  
MAY 31, 2023  
IN THE MATTER OF THE CHILDREN ACT, NO. 8 OF 2001  
AND  
IN THE MATTER OF BABY JA ALSO KNOWN AS  
UNKNOWN BABY B ALSO KNOWN AS ABANDONED BABY – A CHILD  
AND  
IN THE MATTER OF AN APPLICATION FOR ORDERS OF  
ADOPTION BY  
PMM AND SMM– THE  
JOINT APPLICANTS**

**BETWEEN**

**PMM ..... 1<sup>ST</sup> APPLICANT**

**SMM ..... 2<sup>ND</sup> APPLICANT**

**AND**

**LITTLE ANGELS NETWORK ..... RESPONDENT**

**JUDGMENT**

1. The Joint applicants herein moved this honourable court vide Originating Summons dated 14<sup>th</sup> december 2018 and filed on January 29, 2019 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 JA also known as unknown Baby B also known as Abandoned Baby 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 applicants PMM and SMM be authorised to adopt JA also known as unknown BABY B also known as AbandonedBABY, a child;
  - d. Upon the making of the adoption order, the child be known as PDMM;
  - e. Upon the making of the adoption order JUM be appointed as guardian 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 February 19, 2015 in the Adopted Children Register as provided for by section 170 of the *Children Act, 2001*; and
  - g. The Costs of the application be costs in the cause.
2. The Originating Summons is supported by the averments in the Statement in Support of Adoption Application sworn on December 14, 2018. The applicants are adult Kenyan citizen born in 1973 and 1978 respectively. They are married to each other have one biological child together QMM a daughter born on November 13, 1995 and adopted son KMM, aged 7 years at the time this adoption application was filed. The motivation to adopt the baby was ignited by the desire to nurture children who are without homes and to give them a chance to make it in life in a loving caring environment and also as they are not able to have more children of their own due to biological reasons.
  3. The 1<sup>st</sup> applicant is a pastor at the [Particulars Withheld] with a monthly pension of Kes. 25,000.00 while the 2<sup>nd</sup> applicant is a reverend at the said church with a monthly salary of Kes.70,000.00. The couple's monthly expenses are estimated at Kes. 31,000.00, in respect of food, house-help and school fees. They have a parcel of land at Taru, a business and the matrimonial home at Mariakani.
  4. Regarding the child, he is estimated to have been born on July 31, 2019. The child was abandoned in Naivasha Sub-County Hospital on August 1, 2019 by his mother MW. The matter was reported at Naivasha Police Post on August 19, 2019 vide OB NO.xxx . He was committed into the legal custody of New Life Home Trust by the Children's Court Naivasha vide Care and Protection Case No xxx of 2019.
  5. Change Trust, a certified adoption society, in its meeting held on June 4, 2021 declared the child free for adoption and a Certificate S/No.xxx was issued. Subsequently, the child was placed in the care of the Applicants on August 10, 2021.
  6. Upon instituting these proceedings, ATN was on July 20, 2022 appointed the guardian-ad-litem pursuant to Chamber Summons Application dated April 22, 2022. The Director of Children Services and the 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 filed his report dated the September 23, 2022 recommending the adoption. Equally the guardian-ad-litem filed his report dated July 21, 2022 vide which he also 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 that adoption is permanent.



9. I have considered the application herein, materials in support thereof and the evidence by various witnesses. My humble duty is to ascertain from the available evidence whether the minor is available for adoption, the applicants are fit to adopt him and most importantly whether the adoption is in his best interest.
10. The minor herein was abandoned at the Naivasha Sub County Hospital on August 1, 2019. The matter was reported at Naivasha Police Post on August 19, 2019 vide OB NO.xxx . He was committed into the legal custody of New Life Home Trust by the Children’s Court Naivasha vide Care and Protection Case No.xxx.
11. Regarding the baby’s nationality, it is clear the baby was abandoned in Naivasha Sub County Hospital within the Republic of Kenya. Article 14(4) of the Constitution of Kenya, 2010 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 Kenyan citizen by birth.
12. The subject child is above 6 weeks and below 18 years. section 157 of the *Children Act* states that any child who is resident in Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt that the child is fit for adoption.
13. The court is required to assess the suitability of the adoptive parents and in this case the Applicants are Kenyan citizens thus qualifying the adoption to be a local one. They are 49 and 45 years respectively which places them under the age bracket of not less than 25 years or more than 65 (section 158 of the *Children Act*).
14. *In re B (Baby)* [2018] eKLR, Nyakundi, J stated that, “that law presumes that by granting foster care the adoptive parties will provide and promote a stable, supportive and nurturing environment for the child...”.
15. The applicants are financially stable. They have monthly incomes of Kes. 25,000.00 and Kes. 70,000.00 respectively. The couple’s monthly expenses are estimated at Kes. 31,000.00, in respect of food, house-help and school fees. They have a parcel of land at Taru, a business and a matrimonial home at Mariakani. In my humble opinion their incomes, and the properties they have, are sufficient to bring up the child comfortably. I note that they are a caring, loving and happy Christian couple with no criminal record.
16. Since the placement of the minor in into their custody on August 10, 2021the child has fully bonded with them. They also understand the consequences of adoption and that it is permanent. They appreciate the role of parents and admit they will treat the minor like their biological child. They are dedicated to providing a suitable family environment so that the minor can thrive and become fruitful member of the society. I have no doubt that they have met the necessary requirements to adopt the minor and that they will provide and promote a stable, supportive and nurturing environment for him.
17. On the question of whether the adoption is in the best interests of the baby, guidance can be drawn from article 53(2) of the Constitution of Kenya, 2010 and section 8 of the Children Act, 2022 both of which state that the best interests of a child is the paramount consideration when making a decision concerning a child. I am therefore of the view that the proposed adoption in this cause is in the best interest of the subject child.
18. The child herein was abandoned and nobody has come forward to claim him. He is like any other child in need of parental care and guidance. He needs basic necessities like food, shelter, education and clothing. He has fully integrated with the applicants. I am satisfied that this adoption is in his best



interests and therefore allow the application. I am guided by the case of *In re R (Child)* [2021] eKLR where the court stated that, “this is a child who was abandoned at birth. He faced an uncertain future in Children’s Homes and institutions. This adoption affords the child the opportunity to be raised in a loving and secure home environment.”

19. Accordingly the Originating Summons is allowed with orders That:-
- a. Baby JA also known as unknown Baby B also known as Abandoned Baby As a Kenyan citizen by birth;
  - b. The consent of biological parents is dispensed with;
  - c. The applicants PMM and SMM be authorised to adopt Baby JA also known as unknown Baby B also known as Abandoned Baby, who shall henceforth be known as PDMM;
  - d. JUM is hereby appointed Legal Guardian of PDMM in the event the Joint applicants are deceased or otherwise unavailable;
  - e. The Registrar General is directed to record the Adoption Order made herein, and the birth date of PDMM as being February 19, 2015 in the Adopted Children’s Register;
  - f. The guardian *ad litem* is discharged;
  - g. No orders as to costs.

**DELIVERED, DATED AND SIGNED IN MOMBASA THIS 31<sup>ST</sup> DAY OF MAY 2023 VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

**In the presence of: -**

**Applicants absent**

**Winnie Migot - Court Assistant**

