



**In re M aka L (Baby) (Adoption Cause E035 of 2021)  
[2023] KEHC 19522 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19522 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ADOPTION CAUSE E035 OF 2021  
MW MUIGAI, J  
JUNE 30, 2023  
IN THE MATTER OF CHILDREN ACT 2001  
AND  
IN THE MATTER OF BABY M AKA L**

**IN THE MATTER OF**

**SOO ..... 1<sup>ST</sup> APPLICANT  
ABM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The Applicants herein, SOO ID No. xxxxxxxx- Mobile No. 0720xxxxxx and Alice Brenda Mbori ID. No. xxxxxxxx – Mobile No. 0715xxxxxx/0722xxxxxx (“the Applicants”) sought by their application granted orders by this Court to adopt Baby M aka L (hereafter “the child”).
2. Vide Originating Summons application dated 31<sup>st</sup> August, 2021 the Applicants sought the following orders; that the requirements of Section 186 (8) (a) of the Children’s Act 2022 be waived as provided for under Section 187 (1) of the Act; that the Applicants be authorized to adopt baby M aka L and the child shall thereafter be known as LLO; that the child’s date and place of birth be declared to be the 12<sup>th</sup> September 2019 at Nairobi County; that AMM and MAO be appointed as Legal Guardians of the child; that the Registrar General be directed to make the appropriate entries in the Adopted children’s Register.
3. The Applicants further sought GWK be appointed Guardian Ad Litem in this cause and be directed to file a report on the safety of the child in the Applicants custody and that the Department of children services, Machakos be directed to investigate the Applicants’ fitness to adopt or otherwise and file a report in respect thereof.
4. GWK was appointed by this Court as Guardian Ad Litem on 21/06/2022.



5. The Applicants herein are husband and wife were married in 2005 under Luo customary marriage and later solemnized their marriage on 17<sup>th</sup> July 2018 vide marriage certificate Serial No. xxxxxx. The Applicants are both Sale Managers. SO works at [Particulars withheld] Limited while AB works at [Particulars withheld] Limited. The Applicants annexed the following documents in support of their application; Copies of the Applicants ID. Cards Church Recommendation letter by Pastor Shadrack Ashaiyo of [Particulars withheld] Syokimau. Marriage Certificate Serial No. xxxxxx Applicants statement of adoption Applicants financial statements Applicants Medical Reports Police Clearance Certificates Referee information Letters of closest confidants in support of the applicants adoption application Legal Guardians letter of Consent Inquiry form on the Prospective Adopter(s) A comprehensive Home study Report Care Agreement Copies of ID Cards for the Guardian Ad item and Legal Guardians
6. The child (M aka L) who is the subject of the present adoption proceedings was born on 12<sup>th</sup> September, 2019. The child was found abandoned by members of public at Makongeni National Petrol Station under a lorry. A report of abandonment was made at Makongeni Police station vide OB. No. xx/13/9/2019. The child was later taken to Thika Level 5 Hospital by a Good Samaritan of contact No. 0714xxxxxx of ID No. xxxxxxxx being accompanied by Cpl. Ann Wamuyu of contact 0725xxxxxx. The baby was admitted at the hospital for medical care (IP. No. xxxxxx).
7. The minor was committed to the care of the Orphan Children Centre at the Chief Magistrate's Court at Thika vide Care and Protection Case No. 128/2019 on 21<sup>st</sup> November, 2019. The child was discharged from the hospital and admitted at the Orphans Care Centre in Thika on 21/11/2019.
8. A final Police letter from Makongeni Police Station dated 1<sup>st</sup> September, 2020 indicated that nobody had claimed the child since he was abandoned and that the search for his kin has been fruitless. Orphan Children Centre also reported that during the child stay in the institution, no relative had ever turned up to claim him. The minor was freed for adoption by the Buckner Kenya Adoption Society Services in a meeting held on 13<sup>th</sup> November, 2020 vide a Certificate declaring a child free for adoption Serial No. xxxxx.
9. The following documents were availed from Orphan Children Center for Baby M aka L
  1. Initial police letter, dated 13<sup>th</sup> September, 2019
  2. Medical report from Thika Level 5 Hospital dated 29/10/2019
  3. DCO' letter requesting for the child' committal to the Orphan Children Centre.
  4. Committal order to Orphans Children Center, dated 21<sup>st</sup> November, 2019 No. 128/2019
  5. Discharge summary from Thika level 5 Hospital
  6. Admission form to the home
  7. Final police letter dated 1<sup>st</sup> September, 2020
  8. Certificate declaring child free for adoption No. 0387
9. Pursuant to Section 187 (2) (1) of the *Children Act*, 2022 the Kenya Children's Home Adoption Society, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services, and this report was similarly in favor of the proposed adoption.



10. The *guardian ad litem*, GWK a also filed the statutory report on 27<sup>th</sup> September, 2022 in which she noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
11. The Buckner Kenya Adoption Society filed their Social Inquiry and Home Study Report dated 27<sup>th</sup> January 2022. Mary Kamiri, a Social worker for the Adoption Society appeared in Court on 20/04/2023 in respect of these Adoption proceedings. She told the Court that the Society assessed the Adoptive parents who have had the custody of the child. The Agency report contains family and professional background information of the Child's Adoptive Parents. According to the report the Applicants made a joint Adoption Application to Buckner Adoption Society on 19<sup>th</sup> January, 2020 applying to be placed with a boy child aged between 1 to 2 years. The Applicants were taken through the relevant interviews, a home assessment was carried out as well as the pre-placement counselling. The Applicants were found eligible. A Case Committee sitting on 5<sup>th</sup> February, 2021 considered their application and approved them as adoptive parents. The Applicants were thus placed with baby M aka L from Orphans Children Centre on 25<sup>th</sup> March 2021 and have been fostering him since then.
12. Prior to the placement, baby M aka L was declared free for adoption by the Society's Case Committee on 5<sup>th</sup> February, 2021 where a Freeing Certificate Serial Number xxxx was issued in compliance to Section 187 (2) (1) of the Children's Act 2022.
13. The Applicants were married in the year 2006 and solemnized their marriage in the year 2018 vide marriage certificate No. xxxxxx. The applicants do not have biological children. However, they take care of a minor namely LH who was born on 15<sup>th</sup> May 2012 to the late MJH (who was a cousin to the female applicant herein). The said minor is now in grade 3 at Nova Pioneer School Athi River and the Applicants supports the child fully and they plan to do a kinship adoption once they are able to obtain all the necessary consents. Baby M aka L was placed with the Applicants on 25<sup>th</sup> March 2021 and has since continued to enjoy the parental love, care and good nurturing accorded to him by the Applicants. He has also bonded well with the Applicants, siblings and the extended family. The Applicants motivation to adopt a child is due to their desire to be parents and give a loving home to a child in need. They have not been able to get a child of their own.
14. The Applicants live in their own 4 bedroomed house at Syokimau with all the necessary amenities. The Applicants have several properties which includes a home at Syokimau where they live, apartment at Madaraka Estate and vehicles. The 1<sup>st</sup> and 2<sup>nd</sup> Applicants are in stable employment earning a monthly income of Kshs.333,936.65 and Kshs.885,951.00 respectively and have attached their Financial bank statements as proof of their financial capability. The Applicants have fulfilled all the legal requirements to adopt to wit; being married for over three years and not over 65 years of age. Certificate of good conduct permitted and ability to nurture and provide for the child's wellbeing.
15. On observation during the interview sessions and prior meetings it was observed that the Applicants and the minor have bonded well with the minor. The Adoption Society recommended Adoption.
16. The Director of Children Services through a Report dated 31/08/2022 in respect of the proposed adoption of the child by the Applicants was prepared by Emily Kimanzi Machakos Sub County Children Officer. Emily Kimanzi appeared in Court on 20/04/2023 in respect of these proceedings. She told the Court that she visited the Applicants home at Syokimau on 6/07/2022 and found that the child is well settled.
17. The report contains family background information of the Child's Adoptive Parents. The Applicants do not have any biological child(ren). They leave with a child from the 2<sup>nd</sup> Applicant's cousin by the name LOH whose mother has since passed on. The Applicants are intending to adopt the child in



the kinship mode. They own a flat in Syokimau and a plot in the same. The Applicants also own 2 vehicles. During the home visit it was observed that the applicants have bonded well with the minor and they live comfortably in their own house and have the required amenities. The Applicants have no criminal record. The Applicants are socially, economically and financially able to take care of the child. The Applicants motivation to adoption is to assist a needy child and give the child love and all his other needs. The Applicants extended family are in support of these adoption. The adoption was recommended.

18. The Guardian ad Litem, GWK filed her Report dated 8<sup>th</sup> September, 2022 in support of these Adoption proceedings. She stated that she visited the family and observed that the minor has interacted well with the Applicants. The applicants have provided the child with a warm, comfortable and secure home. The child share a strong bond and refers the Applicants as daddy and mummy. The child has also formed a strong bond with the Applicants' foster son who has already assumed the Big brother role. The Guardian Ad litem recommended the adoption.
19. The Legal Guardians AMM of ID No. xxxxxxxx and MAO of ID No. xxxxxxxx (a husband and wife) filed their joint Affidavit of Legal Guardians sworn on 27<sup>th</sup> August, 2021. A is a cousin to A (2<sup>nd</sup> Applicant herein). They stated that they understand their role and duty as Legal Guardians and that they are expected to take over parental responsibility over the minor in case of any eventuality. They recommended the adoption.

### **Disposition**

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application.
2. The Applicants, SOO and ABM are hereby allowed to adopt Baby M aka L.
3. Henceforth, the child shall be known as LLO.
4. The child's date of birth is 12<sup>TH</sup> SEPTEMBER 2019 and the place of birth shall be Nairobi County.
5. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
6. AMM and MAO shall be the Legal Guardians of the child should such eventuality arise.
7. This Court directs the Registrar General to duly enter this order in the Adoption Register.
8. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security of the child within one year of the Adoption in the best interest of the child under Section 8 of Children's Act 2022.
9. The *guardian ad litem* is hereby discharged.

It is so ordered.

**DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 30<sup>TH</sup> DAY OF JUNE 2023 (PHYSICAL/ VIRTUAL CONFERENCE).**

**M. W. MUIGAI**

**JUDGE**



In The Presence/absence Of:

MS Kimenyi - For the Applicants

Geoffrey/Patrick - Court Assistant(s)

