



**In re Baby L (Adoption Cause E024 of 2022)  
[2023] KEHC 21316 (KLR) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21316 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E024 OF 2022  
G MUTAI, J  
JULY 28, 2023  
IN THE MATTER OF THE CHILDREN ACT 2022  
AND  
IN THE MATTER OF BABY L (A CHILD)  
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION  
OF BABY L BY DKM AND NMS (THE JOINT APPLICANTS)  
BETWEEN  
DKM & NMS  
AND  
KKPI ADOPTION SOCIETY  
BETWEEN  
DKM ..... 1<sup>ST</sup> APPLICANT  
NMS ..... 2<sup>ND</sup> APPLICANT  
AND  
KKPI ADOPTION SOCIETY ..... RESPONDENT**

**JUDGMENT**

1. The applicants herein moved this honourable court *vide* originating summons dated November 15, 2022 seeking the following orders:-
  - a. Pursuant to article 14(4) of the Constitution of Kenya, 2010 and section 7 of the Children Act, 2022, this honourable court be pleased to declare the child baby L a Kenyan citizen;



- b. Pursuant to the provisions of section 187 of the *Children Act*, 2022, this honourable court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of section 186 of the *Children Act*, 2022;
  - c. The applicants DKM and NMS be authorized to adopt Baby L ;
  - d. Upon making of the adoption order the child to be known as JMM ;
  - e. Upon the making of the adoption order, HKL and SMM be appointed legal guardians of the child as provided for by the provisions of section 195 of the *Children Act*, 2022;
  - 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 June 14, 2018 in the Adopted Children Register as provided for by section 201 of the *Children Act*, 2022;
  - 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 November 15, 2022. The applicants are adult Kenyan citizens born in 1964 and 1974 respectively. They got married to each other on October 7, 2007. They are not blessed with any biological children of their own. The applicants are also in the process of adopting Baby N who was placed with them same date as the child herein. The motivation to adopt the baby has been ignited by the desire to have children to care for and share parental love with.
  3. The 1<sup>st</sup> applicant is real estate consultant while the 2<sup>nd</sup> applicant is a businesswoman.
  4. The child is estimated to have been born on June 14, 2018. He was born to one MW who gave him up for adoption as she had no means of taking care of the child due to unemployment. The child was committed into the legal custody of Happy Life Children’s Home by the Children’s Court Nairobi *vide* Care and Protection Cause No 490 of 2018.
  5. Kenyans to Kenyans Peace Initiative Adoption Society (KKPI) in its meeting held on October 11, 2019, declared the child free for adoption and a certificate serial No 8xx was issued. Subsequently, the child was placed under the care of the applicants on November 28, 2019.
  6. MMM was on January 23, 2023 appointed guardian *ad litem* pursuant to chamber summons application dated November 14, 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 Mombasa county filed report dated April 12, 2023 recommending the adoption. Equally the guard *ad litem* filed his report dated March 2, 2023 recommending the adoption.
  8. During the hearing the applicant 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 in nature.
  9. I have considered the application herein, the various reports filed herein and oral evidence of various witnesses. I am now tasked with the responsibility of determining the following issues; whether the baby is available for adoption, whether the applicant is fit to adopt the baby and most importantly whether the adoption is in the best of the child.
  10. The baby herein estimated to have been born on June 14, 2018. His biological mother is one MW who gave him up for adoption.



11. 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 parents are not known, is presumed to be a Kenyan citizen by birth. We know that the biological mother of the child was Kenyan. 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 of age, which provision falls within the age bracket of any adoptive baby pursuant to section 184 of the *Children Act*, 2022. Further section 185 of the said Act does recognize that any child who is resident in Kenya whether born in Kenya or not to be 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 59 years and 48 years respectively which places them within 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 said Act.
14. They have been described as financially stable as they are businessman and businesswoman with an estimated monthly income of Kes 200,000/- and several assets in Mombasa, Kikoneni, Shimba Hills and Lungalunga. They also have enough resources necessary family support. The applicants have no criminal record.
15. Since the placement of the minor into their custody on November 28, 2019 the child has fully bonded with them. They also understands 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. They are dedicated to providing suitable family environment so that the child can thrive and become fruitful member of the society. Therefore, I have no doubt that they have met the necessary requirements to adopt the baby and that they will provide and promote a stable, supportive and nurturing environment for 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* of Kenya, 2010 and section 8(1) and (2) of The *Children Act*, 2022 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 baby.
17. The child herein was given up for adoption by his mother MW . 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 joint applicants. I am satisfied that this adoption is in the best interests of the child and therefore allow the application.
18. 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 by the applicants.”
19. Accordingly, the originating summons is allowed with orders that: -
  - a. The child is declared a Kenyan citizen by birth;
  - b. The applicant is authorized to adopt baby L who shall henceforth be known as JMM ;



- c. HKL and SMM are hereby appointed legal guardians of the minor in the event of any eventuality befalling the applicants;
- d. The Registrar General is directed to enter the adoption order made herein and estimated birth date of the child as June 14, 2018 in the Adopted Children's Register; and
- e. The guardian *ad litem* is discharged.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28<sup>TH</sup> DAY OF JULY 2023 VIA MICROSOFT TEAMS**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Ms. Umara for the Joint Applicants

Mr. Arthur Ranyundo – Court Assistants

