



**In re N (Child) (Adoption Cause E023 of 2022)
[2023] KEHC 20952 (KLR) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20952 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E023 OF 2022
G MUTAI, J
JULY 28, 2023
N THE MATTER OF THE CHILDREN ACT, 2022
AND
IN THE MATTER OF BABY NATASHA (A CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS OF
ADOPTION OF BABY N BY DKM AND
NMS (THE JOINT APPLICANTS)**

BETWEEN

DKM 1ST APPLICANT

NMS 2ND 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 N, a Kenyan citizen by birth;
 - 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 NMSbe authorized to adopt Baby N;
 - d. Upon the making of the adoption order, the child to be known as JNM;
 - 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, 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 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. The applicants are also in the process of adopting Baby L, vide separate adoption proceedings, 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 1st Applicant is real estate consultant while the 2nd applicant is a businesswoman.
 4. The child is estimated to have been born on July 22, 2017. She was born to one LM who gave her up for adoption as she had no means of taking care of the child due to unemployment. She signed consent dated December 7, 2017. The child was committed into the legal custody of Happy Life Children's Home by the Children Court Nairobi vide Care and Protection Cause No 554 of 2017.
 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 S/No 697 was consequently 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 said 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 that were filed in support and evidence by various witnesses. I am now tasked to determine 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. I have already narrated the circumstances under which the child was given up for adoption. I need not rehash the same here.
 11. The *Constitution of Kenya, 2010*, in article 14(4) recognize 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. The mother of the child herein is known. She is a Kenyan. That being the case I find and hold that the child is 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 *Children Act*, 2022 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.
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 under the age bracket of not less than 25 years nor more than 65 years for an adoptive parent in compliance with Section 186(2) of the *Children Act*, 2022.
14. They have been described as financially stable as they are businessman and businesswoman with an estimated monthly income of Kshs 200,000 and several assets in Mombasa, Kikoneni, Shimba Hills and Lungalunga. They also have enough resources necessary for the family support. They 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 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. They are dedicated to providing suitable familiar 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 JNA* [2018] eKLR where LA Achode, J stated that: -

“I have perused the entire record and find that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought.”
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 her. She is like any other child in need of parental care and guidance. She needs basic necessities like food, shelter, education and clothing. She has fully integrated with the applicants. I am satisfied that this adoption is certainly in the best interests of the child and therefore allow the application.
18. I am also guided by the case of *In re AA (Child)* [2021] eKLR where the court stated: -

“Article 53 (2) of the *Constitution* emphasizes that the best interest of the child is paramount. The child will have a family and a home if the orders are granted. The applicants are willing and ready to give parental guidance and a loving home and family to the child.”
19. Accordingly, the application is allowed with orders that:
 - a. The child is declared a Kenyan citizen by birth;
 - b. The applicant is authorized to adopt Baby N who shall henceforth be known as JNM
 - c. HKLand SMM are hereby appointed legal guardian 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 the estimated birth date of the child as July 22, 2017 in the Adopted Children's Register;
- e. The guardian ad litem is discharged.

Dated, signed and delivered at Mombasa this 28th day of July 2023

GREGORY MUTAI JUDGE

In the presence of:-

Ms. Umara for the Joint Applicants

Mr. Arthur Ranyundo – Court Assistant

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