



**In re T (Baby) (Adoption Cause E022 of 2022)  
[2023] KEHC 20951 (KLR) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20951 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E022 OF 2022  
G MUTAI, J  
JULY 28, 2023  
IN THE MATTER OF THE CHILDREN ACT, 2022  
AND  
IN THE MATTER OF BABY T (A CHILD)  
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION  
OF BABY T BY DMK AND MNK (THE JOINT APPLICANTS)**

**BETWEEN**

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

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

**AND**

**KKPI ADOPTION SOCIETY ..... RESPONDENT**

**JUDGMENT**

1. The applicants herein moved this honourable court vide Originating Summons dated November 14, 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 T 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 DMK and MNK be authorized to adopt Baby T;
  - d. Upon making of the adoption order, the child to be known as BHM;



- e. Upon the making of the adoption order AM Mand LDM be appointed legal guardians of the child as provided for by the provisions of section 164 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 April 9, 2017 in the Adopted Children Register as provided for by section 170 of the *Children Act, 2022*; 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 November 14, 2022. The applicants are adult Kenyan citizens born in 1972 and 1976 respectively. They got married to each other on September 25, 2004 and are blessed with one biological child namely IMM who is now an adult. The applicants are also in the process of adopting FE who was placed with them in January 2023. The motivation to adopt the baby has been ignited by the desire to give their love, home and hope to children who are in need.
  3. The 1<sup>st</sup> Applicant is accounts assistant manager at Pacific International Lines (PIL) while the 2<sup>nd</sup> applicant is a businesswoman.
  4. The child was born on April 9, 2017. Her biological parents are DI and LN. LN gave up the child for adoption as she is a widow and has other children to take care of. The child was born out of wedlock, something that is considered a curse according to LN's culture. 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. xxxx.
  5. Kenyans to Kenyans Peace Initiative (KKPI) in its meeting held on June 13, 2018, declared the child free for adoption and a Certificate S/No 096 was issued. Subsequently, the child was placed under the care of the Applicants on November 28, 2019.
  6. Upon instituting these proceedings, DMM 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 of 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 1, 2023 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 she understood the consequences of adoption and that it's permanent.
  9. I have considered the application herein, documentary evidence 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 set out the circumstances under which the child was placed under the care of the Applicants. I need not rehash the same here save to state that the child was given up for adoption by the mother.
  11. The *Constitution of Kenya, 2010* 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. Since



the identity and nationality of the child's parents is known it is my finding that the child is a Kenya citizen by birth.

12. The subject child is above 6 weeks and below the age of 18 years. She is thus within the age bracket of any adoptive baby pursuant to Section 184 of the [Children Act, 2022](#). Further Section 185 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 51 years and 47 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 186(2) of the [Children Act](#).
14. They have been described as financially stable as the 1<sup>st</sup> applicant is an employee of Pacific International Lines while the 2<sup>nd</sup> applicant is a businesswoman with an estimated monthly income of Kes.175,000/- and Kes.142,000/- respectively. The 1<sup>st</sup> applicant also receives cash benefits of Kes.350,000/-, has treasury bonds worth Kes.5,000,000/-, runs own accounting consultancy that earns him Kes.100,000-150,000 monthly. The 2<sup>nd</sup> applicant earns an extra Kes.22,400/- monthly from sale of honey and has shares worth Kes.800,000/- at Mombasa Port Sacco which earn her Kes.89,000/- per year as dividend. The couple have several assets in Salgaa, Ruiru, Nakuru and Mombasa. They therefore have enough resources necessary for the family support. The applicants 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 of GW \(Baby\)](#) [2021] eKLR where the court stated that,

“The Court finds that it is in the best interests of the child to make the adoption order; that the Applicants are suitable, qualified and able adoptive parents who understand the nature of the adoption process and agree to give effect to the child's ensuing rights; and that the child and the Applicants have bonded well as a family together with the Applicants' own biological children, and the Applicants' extended family and friends support the adoption.”
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 mother LN. 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 applicant. 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 MA \(Baby\)](#) [2021] eKLR where the court stated: -

“This court in the case of In re B (Baby) [2018] eKLR held that the purpose of Kenya's Constitution and Children's Act is to protect and promote the welfare of Children by



providing them with stable family units. The fundamental concern therefore in every adoption cause provision is of the best interest of that very child.

From the foregoing and in view of Section 4(2) and (3) of the Children's Act where I am required to consider the best interests of the child before making any decision affecting the affairs of the child, I am convinced that it is in the best interest of the child that he be adopted by the applicants so as to have home and also have parents to nurture, educate and protect him."

19. Accordingly, the application is allowed with orders that:
- a. The child is declared a Kenyan citizen by birth;
  - b. The applicants are authorized to adopt Baby T who shall henceforth be known as BHM;
  - c. AMM and LNM are hereby appointed legal guardians of the minor in the event the applicants are deceased or are otherwise unavailable before BHM becomes an adult;
  - d. The Registrar General is directed to enter the adoption order made herein and estimated birth date of the child as April 9, 2017 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**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Ms. Umara for the Joint Applicants

Mr. Arthur Ranyundo – Court Assistant

