



**In re Abandoned Baby alias RM (Adoption Cause E008 of 2022)
[2023] KEHC 21683 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21683 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E008 OF 2022
G MUTAI, J
AUGUST 4, 2023
IN THE MATTER OF THE CHILDREN ACT 2001
AND
IN THE MATTER OF ABANDONED BABY ARM
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS
OF ADOPTION OF ABANDONED BABY ARM BY
MKJ AND LNK (THE JOINT APPLICANTS)**

BETWEEN

MKJ 1ST APPLICANT

LNK 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The joint applicants herein moved this honourable court vide Originating Summons dated June 6, 2022 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 Abandoned Baby Alias Rm 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 MKJ and LNK be authorized to adopt Abandoned Baby alias RM;
- d. Upon the making of the adoption order the child to be known as MBM;
- e. Upon the making of the adoption order, OMM be appointed legal guardians 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 May 9, 2019 in the Adopted Children Register as provided for by section 170 of the Children Act, 2001; and
- g. The costs of this application be costs in the cause.
 - 1. The application is supported by the averments in the statement in support thereof sworn on June 6, 2022. The applicants are adult Kenyan citizens born in 1964 and 1963 respectively. They are married to each other and not blessed with children of their own. The motivation to adopt the baby has been ignited by the desire to have children of their own to make their family complete. Regarding their occupation, the applicants are both teachers, teaching at [Particulars Withheld] School and [particulars Withheld] School respectively.
- 3. The child is estimated to have been born on May 9, 2019. He was abandoned by his mother MK who absconded from Kakamega County General Teaching & Referral Hospital Maternity Ward on May 9, 2019. The matter was reported at Kakamega Police Station and the same booked on Occurrence Book Number as entry number xx. The child was committed to the legal custody of Springs of Life Children's Home by the Chief Magistrate's Court, Kakamega vide Care and Protection Cause Number 24 of 2019.
- 4. In its meeting held on July 8, 2021, the Case Committee of Little Angels Network declared the child free for adoption and a Certificate Serial No.xxxx was issued.
- 5. Upon instituting these proceedings, JKK was on March 23, 2023 appointed guardian ad litem. The County Director of Children Services through the Children Department, Mombasa and the guardian ad litem were directed to file their respective social inquiry reports within 30 days.
- 6. During the hearing, the Director of Children Services through the County Children Coordinator Kilifi County Winfred Kaluku informed the court that they were unable to file social inquiry report due to online filing challenges. That the applicants are qualified to adopt the child. The child has bonded well with the applicants. She recommended the adoption. The guardian ad litem filed his report dated May 16, 2023 recommending the adoption.
- 7. 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 it is permanent.
- 8. I have considered the application herein materials in support and evidence by various witnesses and the issues that emerge for determination are; whether the baby is available for adoption, whether the applicants are fit to adopt the baby and most importantly whether the adoption is in the best of the child.
- 9. I have already set out the circumstances under which the child was rescued. I need not rehash the same here. The child was placed with the applicants on October 4, 2021 who have since then played the role of the father and the mother to him. He has been under their care since he was two years and 5 months old. Nobody has come forward to claim the child and therefore the need consent pursuant to sections



158 and 159 of the [Children Act](#), 2001 is dispensed with. I am guided by the case of [In re HN \(Baby\) \[2020\] eKLR](#) where the court stated:-

' As there is nobody laying claim over the baby, the requirement for consent is hereby dispensed with pursuant to Section 159(1) of the Children's Act. In view of the above consideration, it is my finding that the child is available and suitable for adoption.'

10. Regarding the baby's nationality, it is clear he was abandoned at Kakamega County Teaching and Referral Hospital Maternity Ward within the Republic of Kenya. Article 14(4) of the [Constitution](#) 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. In view of this provision the child herein is presumed to be a Kenyan citizen by birth.
11. In terms of age the child is above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to Section 156 of the [Children Act](#). Further Section 157 of the said Act does recognize any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. I have no doubt therefore that the child is fit for adoption.
12. Concerning the applicants' suitability, they are Kenyan citizens aged 59 and 60 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 158 of the Children's Act. The applicants have been described as financially stable as they are both teachers. They have no criminal record. Since the placement of the minor into their custody the child has fully bonded. 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.

Consequently, I have no doubt that they have met the necessary requirements to adopt 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 bring up the child and to furnish her with appropriate support and maintenance within their resource base availed to them.'

13. 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](#) and Section 8 of the [Children Act](#), 2022 which underscores the best interests of a child as the principal consideration before making any decision concerning a baby.
14. The child herein was abandoned at in Kakamega Teaching and Referral Hospital. He needs basic necessities like food, shelter, education and clothing. He has fully integrated with the applicants. It is obviously in the best interests of the child that this adoption application be allowed. I am guided by the case [In re IK \(Child\) \[2020\] eKLR](#) where the court stated:-

' She needs parental care to grow up as a normal child with emotional and physical protection which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and wellbeing of the child. As the [Constitution](#) and the law state, in all matters concerning a child, the best interests of the child are paramount.'

15. Accordingly, the application is allowed with orders that:
 - a. The child is declared a Kenyan citizen by birth;



- b. The consent of biological parents or guardians is dispensed with;
- c. The applicants are authorized to adopt Abandoned Baby alias RM who shall henceforth be known as MBM;
- d. OMM is hereby appointed legal guardian of the minor in the event of any eventuality befalling the applicants;
- e. The Registrar General is directed to make an entry recording the adoption and the date of birth of the child as being May 9, 2019 in the Adopted Children Register; and
- f. The guardian ad litem is discharged.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 4TH DAY OF AUGUST 2023

GREGORY MUTAI

JUDGE

In the presence of :-

Ms. Ngugi for the joint applicants; and

Mr. Arthur Ranyundo – Court Assistant.

