



REPUBLIC OF KENYA



KENYA LAW
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**In re MJ (Baby) (Adoption Cause E017 of 2022)
[2023] KEHC 21695 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21695 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E017 OF 2022**

**G MUTAI, J
AUGUST 4, 2023**

BETWEEN

AWC 1ST APPLICANT

GNM 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The joint applicants herein moved this honourable court vide originating summons dated 5th September 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, Baby MJ, 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 joint applicants AWC and GNM be authorized to adopt Baby MJ;
 - d. Upon the making of the adoption order, the child to be known as DBC;
 - e. Upon the making of the adoption order, KOM and ALA 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 11th June 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.
2. The application is supported by the averments in the statement in support thereof sworn on 5th September 2022. The applicants are adult Kenyan citizens born in 1980 and 1989 respectively. They got married to each other in July 2014 under customary law. They solemnised their marriage through a church wedding on 29th August 2020. They are 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 and to support a child to have a future and a home. Regarding their occupation, the 1st applicant is an employee of [Particulars Withheld] while the 2nd applicant is a farmer.
 3. The child is estimated to have been born on 11th June 2019. He was found abandoned in [Particulars Withheld] and was rescued by a good Samaritan who is also a village elder at [Particulars Withheld] namely HA. According to her she received information from members of the public that there was a baby dumped at the dumping site. She rushed to the scene and found the baby wrapped in a baby shawl, she rescued him and reported the matter at Nyali Police Station vide Occurrence Book Number xxxx. The child was committed to the legal custody of Baby Life Rescue Centre Trust by the Tononoka Children’s Court vide Care and Protection Cause Number xxxx.
 4. In its meeting held on 4th August 2021, the case committee of Little Angels Network declared the child free for adoption and issued a Certificate Serial No. xxxx to that effect.
 5. UM was on 26th October 2022 appointed guardian ad litem. The County Director of Children Services through the Children Department, Mombasa and guardian ad litem were directed to file their respective social inquiry reports within 30 days.
 6. Preceding the hearing, the Director Children Services through the County Children Coordinator Kwale County filed two social inquiry reports dated 13th December 2022 and 17th May 2023 respectively, recommending the adoption. Equally the guard ad litem filed her report dated 26th November 2022 and filed on 29th November 2022 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. The child was placed with the applicants on 27th August 2021. They have played the role of a father and a mother to him. He has been under their care since he was 2years and 2 months old. Nobody has come forward to claim the child and therefore the need for consent pursuant to section 186(8) and 187 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 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, he was abandoned at [Particulars Withheld], Mombasa County within the Republic of Kenya. Article 14(4) of *the Constitution* of Kenya, 2010 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. In view of this provision the child herein is presumed to be 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 184(1) (b) of the Children’s 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 the child is fit for adoption.
12. Concerning the applicants’ suitability, they are Kenyan citizens aged 43 and 34 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. The applicants have been described as financially stable as the 1st applicant is an employee of Base Titanium, Kwale and the 2nd applicant a farmer with an average income of Kshs 35,000 and 70,000 per month respectively. They have no criminal record. Since the placement of the minor into their custody 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.
13. 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 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.”
14. 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.
15. The child herein was found abandoned at [Particulars Withheld], Mombasa County. He needs basic necessities like food, shelter, education and clothing. It is obviously in the best interests of the child that this adoption application be allowed. I am guided by the case of *In re JK* [2021] eKLR where the court stated: -

“In light of 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 to and by the applicants.”
16. Accordingly, the application is allowed with orders that:
 - a. The child is declared a Kenyan citizen by birth;
 - b. The consent of the biological parents or guardians is dispensed with;
 - c. The applicants are authorized to adopt Baby MJ who shall henceforth be known as DBC;
 - d. KOM and ALA are hereby appointed legal guardians 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 11th June 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

