



**In re MZ (Baby) (Adoption Cause E008 of 2023)  
[2023] KEHC 21681 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21681 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E008 OF 2023  
G MUTAI, J  
AUGUST 4, 2023  
IN THE MATTER OF THE CHILDREN ACT, 2022  
AND  
IN THE MATTER OF BABY MZ  
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION  
OF BABY M ZBY LGH AND EWF (THE JOINT APPLICANTS)**

**BETWEEN**

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

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

**AND**

**BUCKNER KENYA ADOPTION SERVICES ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The joint applicants filed the Originating Summons dated May 9, 2023, in which they sought the following orders: -
  1. 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 MZ a Kenyan citizen by birth;
  2. 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;
  3. The applicants LGH and EWF be authorized to adopt Baby MZ ;



4. Upon the making of the adoption order the child to be known as LIH ;
  5. Upon the making of the adoption order MMM and FWM be appointed legal guardians of the child as provided by the provisions of section 188 of the *Children Act, 2022*;
  6. Upon the making of the adoption order the Registrar General do make an entry recording the adoption and the date of birth of the child as January 8, 2021 in the Adopted Children Register as provided for by section 201 of the *children Act, 2022*;
  7. The costs of this application be costs in the cause.
2. In their joint statement in support of the application sworn on May 9, 2023 the joint applicants deposed that they were respectively born on February 22, 1974 and 1975. They are both Kenyan citizens of African race. They reside in Nyali, Mombasa and have done so for over 10 years. They got married on November 29, 2003. The marriage was solemnized at [Particulars withheld]. The joint applicants do not have biological children of their own as the 1<sup>st</sup> applicant is zoospermic. They however have an adoptive son LKH. LKH was born on 1<sup>st</sup> June 2017 and was 5 years and 11 months when the adoption application was filed. The joint applicants are individuals of sound mind, adhere to the Christian faith and have been described as financially stable. Their application to adopt the child has the support of their families and friends. They are not related to the child. They propose that the child be known as LIH in the event the adoption is successful.
  3. The child Baby MZ was born on 8<sup>th</sup> January 2021. She was found abandoned on 7<sup>th</sup> March 2021 at [Particulars withheld] village Gatundu North in Kiambu County. She was found by a Ms. MWK. The matter was reported at Mwea Police Post vide OB NO. 15/07/xx/21. The baby was then taken Igegania Level IV Hospital for medical checkup. She was placed at New Life Home, Nyeri on 8<sup>th</sup> March 2021. On 16<sup>th</sup> March 2021 Baby MZ was committed to New Life Home Trust for care and protection pursuant to orders issued by the Children Court at Gatundu vide Care and Protection Cause No. E002 of 2021 for a period of 1 year. The child was placed under the care and protection of the joint applicants on 19<sup>th</sup> May 2022. They have fostered the child since then.
  4. Buckner Kenya Adoption Services investigated the joint applicants and prepared a report. They also declared the child free for adoption as per the Certificate of Declaring a Child Free for Adoption dated 25<sup>th</sup> February 2022.
  5. The applicants attached to their application the following documents; Care and Protection Order issued by Gatundu Chief Magistrate on 16<sup>th</sup> March 2021, the identification documents of the applicants, the guardian ad litem and the proposed legal guardians, their marriage certificate, Certificate of Entry in the Adopted Children Register in respect of Lian Kuhani Hanjari, Foster Care Agreement in respect of the subject child, the reports of the adoption society, Certificate of Declaring a Child Free for Adoption dated 25<sup>th</sup> February 2022, the letter Written by Buckner Kenya Adoption Services to the Court dated 9<sup>th</sup> January 2022, bank account statements, the Directorate of Criminal Investigations clearances, medical reports, among other documents. Also attached to the application were affidavits and consents of the proposed legal guardians, proposed guardian ad litem as well as their identification documents. The court has had sight of these documents and considered them when writing this judgment.
  6. The matter was first before me on 19<sup>th</sup> June, 2023. On the said date I fixed the chamber summons dated 9<sup>th</sup> May 2023 for hearing on 28<sup>th</sup> June 2023. On the latter date, Ms. DMJ, testified. D is a banker with the National Bank of Kenya. She stated that she knew what the role of the guardian ad litem is. In her view, it is to be the eyes and ears of the court. She was aware that she would be required to write a report.



Being satisfied with her independence and the lack any interest in the matter that could be adverse to the child I appointed her as the guardian ad litem in respect of the adoption cause. Consequently, I directed her to prepare a statutory report and submit the same to the Deputy Registrar within 30 days. I also directed the County Coordinator of Children Services to prepare the social inquiry report and to file the same with the Deputy Registrar within 30 days. The matter was slated for hearing on 31<sup>st</sup> July 2023.

7. On 31<sup>st</sup> July, 2023 5 witnesses testified in support of the adoption application. The first witness was MWK. She averred that the child is well integrated with the applicants. Consequently, she recommended adoption. The second witness was the guardian ad litem. She presented her report dated 28<sup>th</sup> July 2023 vide which she recommended the adoption. The joint applicants were the 3<sup>rd</sup> and 4<sup>th</sup> witnesses. They stated that they wish to expand their family and to give hope to a child. They were both aware that adoption is permanent. They undertook to bring up the child in a loving, caring Christian environment, to instill in her good manners and also to correct her whenever she errs. The last witness was Ms. LK. L is a Children Officer with the Regional office of the Children Department. She is based in Mombasa Ms. K recommended the adoption.
8. I have considered the Originating Summons, the Supporting documents, and the reports by various persons and bodies, in particular by the Adoption Society, the guardian ad litem, and the children Department. I must now make my determination.
9. The issues that emerge for determination by me 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.
10. I have already set out the circumstances under which the child was found. The child was abandoned by the parents at birth. Nobody has come forward to claim the child and therefore the need for consent pursuant to section 186(8) and 187 of the *Children Act*, 2022 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.”
11. Regarding the baby’s nationality, it is clear that she was found abandoned in Gatundu in Kiambu 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.
12. 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 (b) of the *Children Act*, 2022. Further section 185(1) of the said Act does that 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. Concerning the joint applicants’ suitability, they are Kenyan citizens aged 46 and 45 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’s Act*, 2022. The applicants have been described as financially stable. 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 are aware that once an adoption order is made it is permanent. They appreciate the role of a parent and admit they will treat the baby like their biological child.



14. 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 bringing up the child and to furnish her with appropriate support and maintenance within their resource base available to them.”

15. 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 underscores the best interests of a child as the primary consideration before making any decision concerning a baby.

16. Further the court in the case of *In re MA (Baby)* [2021] eKLR 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 is the best interest of that very child.”

17. The child herein was found abandoned thus she needs basic necessities like food, shelter, education and clothing. She 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 of *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.”

18. 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 LGH and EWF are authorized to adopt Baby MZ who shall henceforth be known as LIH;
- d. MMM and FWM are hereby appointed legal guardians of the child in the event of any eventuality befalling the applicants;
- e. The Registrar General is directed to enter the adoption order made herein and the estimated date of birth of the child as January 8, 2021 in the Adopted Children’s Register; and
- f. The guardian ad litem is discharged.

**DELIVERED, DATED AND SIGNED AT MOMBASA THE 4<sup>TH</sup> DAY OF AUGUST 2023 VIA MICROSOFT TEAMS**

.....

**GREGORY MUTAI**

**JUDGE**

In the presence of:-



Ms. Ngugi for the Joint Applicants; and  
Mr. Arthur Ranyundo – Court Assistant

