



**In re M alias MK (A Child) (Adoption Cause E006 of 2023)  
[2023] KEHC 23190 (KLR) (27 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23190 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E006 OF 2023  
G MUTAI, J  
SEPTEMBER 27, 2023  
IN THE MATTER OF THE CHILDREN ACT, 2022  
(ACT NO. 29 OF 2022)  
AND  
IN THE MATTER OF BABY M ALIAS MK –A CHILD  
AND  
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF  
BABY M ALIAS MK – A CHILD BY FMM AND GKT  
(THE JOINT APPLICANTS)**

**BETWEEN**

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

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

**AND**

**THE LITTLE ANGELS NETWORK ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The joint applicants filed the Originating Summons dated 13<sup>th</sup> April 2023 *vide* which they sought the following orders:-
  1. 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 M alias MK as a Kenyan citizen by birth;



2. Pursuant to the provisions of section 87 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 FMM and GKT be authorized to adopt Baby M alias MK, a child;
  4. Upon the marking of the adoption order the child be known as MMM;
  5. Upon the making of the adoption order Jesca Zabibu Chinyanga be appointed a guardian of the child as provided for by the provisions of section 195 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 estimated date of birth of the child as 27<sup>th</sup> May 2020 in the Adopted Children Registrar as provided for by section 201 of the *Children Act, 2022*;
  7. The costs of this application be costs in the cause.
2. The Originating Summons was supported by Statement in Support of the Adoption Application dated 13<sup>th</sup> April 2023 made jointly by the Applicants. In the said statement the applicants, who are a married couple of African descent, married in 2005 at Soul Harvest Ministries, Mombasa under the *African Christian Marriage and Divorce Act* (repealed), averred that they were born in 1974 and 1969 respectively. They stated that they have resided in VOK Estate, Kisauni within Mombasa County for a period of about ten years. The couple have one adoptive son, MBM. The child they propose to adopt was received into their care and possession on 26<sup>th</sup> March 2022 and has been with them ever since. The child is of the African race and Kenya nationality.
  3. The applicants averred that they meet all the conditions for adoption as they are each of sound mind, have not been convicted of offences set out in the Third Schedule of the *Children Act, 2022*, possess a certificate of good conduct and are not a homosexual or a lesbian.
  4. The applicants stated that if the application is successful they propose to name the child the subject of these proceedings MMM.
  5. They attached to their application copies of their national identity cards, the marriage certificate, the adoption order issued by this Court on 12<sup>th</sup> March 2021 in Adoption Cause no 7 of 2020 vide which the Joint applicants adopted MB, certificate of declaring a child free for adoption, certificates of good conduct in respect of the joint applicants, reports and attachments thereto written by the Little Angels Network, Foster Care Agreement between the joint applicants and Baby Life Rescue Center, Preplacement Report as well as the required consents and affidavits.
  6. Baby M alias MK is a female child estimated to have been born on 27 May 2020. Her biological mother, also called MK, abandoned her at birth at the Coast General Hospital. She never returned to claim the child. The matter was reported at the Tononoka Police Station and was booked as Occurrence Book Number 10/5/06/2020. The child was committed to the Baby Life Rescue Center on 18<sup>th</sup> June 2020 by the Hon V. J. Yator, SRM, *vide* Protection and Care Cause no 107 of 2020. Neither the child's mother nor her putative father, a Mr. D, have claimed her to date.

### **Evidence of the Applicants and their Witnesses**

7. The matter came before me on 15<sup>th</sup> June 2023 for the hearing of the Chamber Summons application dated 13<sup>th</sup> April 2023. After hearing the testimony of Mr. Amos Nguta Kombo, and being satisfied that he was qualified, I appointed the said person as the guardian-*ad-litem* of the child. I directed him to file the statutory report required under section 188(2) of the *Children Act* within 30 days. I also



ordered the Director of Children Services through the Children's Department Mombasa to prepare the social enquiry report within a similar period.

8. I heard the Originating Summons on the 20<sup>th</sup> of July and the 18<sup>th</sup> of September 2023. Six witnesses testified. The 1<sup>st</sup> applicant, FMM adopted his statement. He testified that he is married to the 2<sup>nd</sup> Applicant. The proposed adoption is their second. The couple live in Bamburi within the County of Mombasa. He is a banker working with I&M Bank. They would wish to change the child's name to MMM if the application is successful. The 1<sup>st</sup> applicant indicated that he is aware that in adoption order, once made, is irreversible. He deposed that the child has bonded well with MB, their adopted son. His wife, GKT, the 2<sup>nd</sup> applicant, works as a clerk at the Kenya Ports Authority. She reiterated what the 1<sup>st</sup> applicant had stated. The guardian-*ad-litem* was the third witness. He testified that the joint applicants have the resources to care for the proposed adoptive child. In his view, the child had bonded well with the applicants. It was therefore his opinion that the adoption order be issued.
9. The Court also heard the testimonies of Joshua Wambua Mwalimu of the Little Angels Network and Ms. Njeri Mwangi of the Children's Department. Both these witnesses supported the application. Ms. JZC, the proposed legal guardian, also testified. She expressed her readiness to be the Legal Guardian.

### **Analysis of the Facts and the Law**

10. I have considered the Originating Summons, the Supporting documents, and the reports by various persons and bodies, particularly the Adoption Society, the guardian-*ad-litem*, and the Children's Department. I must now make my determination.
11. 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.
12. I have already set out the circumstances under which the child was found. The birth mother abandoned the child at birth. Neither she nor the child's putative father has come to claim the child. I am satisfied that sufficient efforts were made by the authorities to trace the child's parents to no avail. In the circumstances the need for consent pursuant to sections 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.”
13. Regarding the baby's nationality, it is clear that she was found abandoned at the Coast General Hospital in the Republic of Kenya. Article 14(4) of the *Constitution* recognizes that a child who is less than eight 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, I find and hold that the child herein is a Kenyan citizen by birth.
14. In terms of age the child is above six weeks and below 18 years and thus 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 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.
15. Concerning the joint applicants' suitability, they are Kenyan citizens aged 49 and 54 years respectively which places them within 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 know that it is permanent once an adoption order is made. They appreciate the role of a parent and admit they will treat the baby like their biological child. The applicants have an adoptive son.

16. 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 available to them.”

17. 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.

18. 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.”

19. The child herein was abandoned at birth. 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.”

20. Accordingly the Originating Summons 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 FMM and GKT are authorized to adopt BABY M alias MK, who shall henceforth be known as MMM;
- d. JZC is hereby appointed as the legal guardian of MMM in the event the applicants are deceased or are otherwise unavailable;
- e. The Registrar General is directed to enter the adoption order made herein, and the estimated date of birth of the child as 27<sup>th</sup> May 2020, in the Adopted Children’s Register; and
- f. The guardian-*ad-litem* is discharged.

Orders accordingly.



**DELIVERED AND DATED AT MOMBASA THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2023 VIA MICROSOFT TEAMS.**

.....

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Ms. Katsya for the joint Applicants; and

Mr. Arthur Ranyondo - Court Assistant

