



**In re GE (Child) (Adoption Cause E004 of 2023)
[2023] KEHC 27256 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27256 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E004 OF 2023**

G MUTAI, J

DECEMBER 20, 2023

IN THE MATTER OF

DCK 1ST APPLICANT

HWM 2ND APPLICANT

JUDGMENT

1. The joint applicants, DCK and HWM of Ukunda, Kwale County, in the Republic of Kenya, filed the instant originating summons dated March 17, 2023. *Vide* the said originating summons, they sought the following orders:-
 1. That the requirements of section 158(4) (a) of the *Children Act*, 2022 be waived as provided for by section 159(1) of the *Act*;
 2. That WN in the said Republic be appointed guardian ad litem in the case;
 3. That the applicants be authorised to adopt Baby GE and the baby be known as ZKC;
 4. That ATM be appointed the legal guardian of the child;
 5. That the minor be considered a Kenya citizen by birth;
 6. That the Director of the Children’s Department investigate the case and file a report; and
 7. That the Registrar General shall make in the Adopted Children’s Register an entry recording the adoption in accordance with the particulars set out in the schedule attached hereto.
2. In the statement in support of the joint application, the applicants averred inter alia that they are lawfully married to each other, having celebrated their union on August 10, 2014 at PCEA [particulars withheld] Church. The joint applicants are both adults of sound minds engaged in small income-generating activities in Ukunda. They are above 25 years of age and below 65, are of the African race,



and are in good health. The applicants profess the Christian faith and possess certificates of good conduct issued by the Directorate of Criminal Investigations.

3. Regarding the child, the applicants aver that he was presumably born on January 11, 2021 and was thereafter abandoned in a banana plantation at Ruaka. He was found by SN, who reported the matter to the Ruaka Police Post. The incidence was recorded under entry OB XXXX/2021. The baby was then taken to Kihara Level 4 Hospital for medical attention. His parents have not been traced to date.
4. Baby GE was committed to the care and protection of the Limuru Children Centre on February 7, 2021 vide the SRMCC Protection and Care Cause No. XXXX of 2021, for a period of 6 months. The applicants received Baby GE under their care and possession on March 16, 2022, and they have fostered the child ever since. Limuru Children Centre support the application for the adoption application.
5. The applicants attached to their application documents supporting their application which included Court orders, reports by the Children's Officers, admission forms, identification documents, and certificates of good conduct, among other documents. I have read these carefully and considered them in this judgment.
6. The applicants filed together with their originating summons a chamber summons application vide which they sought to have Ms. WN appointed as a guardian ad litem. The application came up for hearing on April 25, 2023. Upon hearing her oral testimony I:-
 1. I appointed the said WN as the guardian ad litem in respect of these proceedings;
 2. I directed Ms. WN to prepare and file the necessary report within 30 days;
 3. I directed the Director of Children Services through the Children Department to prepare the necessary social inquiry report within 30 days of the 25th day of April 2023; and
 4. I slated the main originating summons for hearing on June 8, 2023.
7. The main case was heard on 3rd October and December 13, 2023. A total of 6 witnesses testified. The first witness was Mr Peter Ndotono of the Kenya Children's Homes Adoption Society. He testified that they vetted the applicants on January 19, 2022 and found them suitable and issued a certificate serial No. 8xxx6 to that effect. He testified that the applicants had bonded well with the child; consequently, he produced the report dated March 20, 2023 recommending the adoption.
8. The guardian ad litem was the second witness. Ms. WN testified that she visited the applicants' home three times. She testified that the applicants have a good home. They have one other child and appeared to have bonded well with the adoptive child and related well with him. There had been no change in the applicant's relationship with the adoptive child, notwithstanding the fact that the applicants had since the application was filed, given birth to their own biological child. The guardian ad litem recommended the adoption.
9. The proposed legal guardian, ATM, was the third witness. Mr M is the brother of the 2nd co-applicant. He is married. He testified that he was ready to be the legal guardian of the adoptive child in the event the applicants died or were otherwise unavailable to take care of him. Further, he stated that his wife was agreeable to his appointment as a legal guardian.
10. The joint applicants were the fourth and fifth witnesses. The 1st applicant is a tuk-tuk driver. He stated that he was aware of the consequences of adoption. He further stated that he was ready to take care of the adoptive child as though he were his own flesh and blood. He knows that adoption is permanent. The 2nd co-applicant sells second-hand clothes. She testified that both the proposed adoptive child and the biological child were her children and that there was no difference between them. She stated that



she was aware that Baby GE would have the right to inherit their property if the adoption application was allowed. She testified that if the adoption application were successful, the baby would be known as ZKC.

11. The last witness was Zephaniah Apoko of the Directorate of Children Services, Kwale. Mr. Apoko presented his report vide which the said department recommended adoption.
12. I have considered the application herein, the documents in support thereof and evidence of the various witnesses. 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.
13. I have already set out the circumstances under which the child was found. The child was abandoned by the mother in Ruaka about one month after he was born. Nobody has come forward to claim the child. The need for consent pursuant to sections 186(8) and 187 of the *Children Act* 2022 is therefore 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.”
14. Regarding the baby’s nationality, it is clear from the evidence adduced that he was found abandoned a month after his birth. Article 14(4) of the *Constitution of Kenya*, 2010 states 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, the child herein is presumed to be a Kenyan citizen by birth.
15. In terms of age, the child is above six 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) states that any child who is a resident of Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt the child is fit for adoption.
16. Concerning the Joint applicants’ suitability, they are Kenyan citizens aged 32 and 31 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. 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 once an adoption order is made, it is permanent.
17. 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.”
18. 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.



19. 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.”

20. The child herein was found abandoned. He, therefore, needs basic necessities like food, shelter, education and clothing. He has fully integrated with the applicants. It is obviously in the child’s best interests that this adoption application is 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 well-being of the child. As the *Constitution* and the law state, in all matters concerning a child, the child’s best interests are paramount.”

21. Based on the foregoing, I find and hold that the adoption application has merits. Consequently, I issue the following orders:-

1. The child, Baby GE, is hereby declared a Kenya Citizen by birth pursuant to Article 14(4) of the *Constitution* of Kenya, 2010 and Section 7(1) of the *Children Act*, 2022;
2. The requirement of the consent of the biological parents of the child to the adoption under section 186 of the *Children Act*, 2022 is hereby dispensed with;
3. The Joint Applicants, DCK and HWM, are hereby authorized to adopt Baby GE, who shall henceforth be called ZKC;
4. ATM is hereby appointed as the legal guardian of Baby GE, now known as ZKC, in the event the Joint Applicants become deceased or are otherwise permanently unable to take care of Baby GE, now known as ZKC, before he attains the age of majority;
5. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the estimated date of birth of the child as being 11th January 2021 in the Adopted Children Register; and
6. The guardian-ad-litem, WN, is hereby discharged.

Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 20TH DAY OF DECEMBER 2023 AT MOMBASA VIA MICROSOFT TEAMS.

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GREGORY MUTAI
JUDGE

In the presence of: -

No appearance for the joint applicants

Arthur – Court Assistant

