



REPUBLIC OF KENYA



KENYA LAW
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**In re AC (Baby) (Adoption Cause E130 of 2021)
[2022] KEHC 11756 (KLR) (Family) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 11756 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

ADOPTION CAUSE E130 OF 2021

LA ACHODE, J

APRIL 28, 2022

**IN THE MATTER OF THE CHILDRENS ACT NO. 8 OF 2011
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY AC**

IN THE MATTER OF

JGM 1ST APPLICANT

JCWG 2ND APPLICANT

JUDGMENT

1. The applicants JGM and JCWG are in a monogamous marriage which was solemnized at the CITAM church on the March 10, 2012 as evinced by the Certificate of Marriage Serial No. xxxxxx. They have not been blessed with children of their own. They wish to adopt a male child known as Baby AC through the Originating Summons dated October 4, 2021. The Applicants have also filed another application wishing to adopt a second child. That Application is in adoption cause No. 131 of 2021 and is also before this court.
2. From the pleadings, the 1st applicant is a pastor at the [Particulars withheld] Thika which is run by Nairobi [Particulars withheld] and the 2nd applicant is a Director of [Particulars withheld] School and scholarship fund which is managed by Nairobi Chapel. They reside in [Particulars withheld] Estate and both profess the Christian faith.
3. The records before court indicate that the minor in this matter was a newborn found abandoned on July 15, 2020 in Katiba area, Murang'a East Sub County. The matter was reported at Murang'a police station and booked as OB No. xx/xx/07/2020. The minor was then taken to the Murang'a Level 5 Hospital for medical examination where he was admitted. Upon discharge from hospital the minor was placed at New Life Home Trust - Nyeri for care and protection pending a committal order.



4. On March 24, 2020 the Murang'a Police Station issued a final police letter indicating that the biological parents of the minor had not been traced, nor did anyone come forward to claim the child. On August 27, 2020 the children's court sitting at Murang'a vide Protection and Care Case No. 5 of 2020 committed the minor to New Life Home Trust – Nyeri. On June 2, 2021 the Applicants signed a foster care agreement and on the same day took the child into their care with a view of adopting.
5. Prior to the hearing of the adoption application, the Buckner Kenya Adoption Services prepared and filed a report dated October 21, 2020. They also issued a certificate dated May 13, 2021, declaring the child free for adoption. The guardian ad litem VWM filed a report dated November 11, 2021 which was favourable and recommended the adoption of the child by the Applicants.
6. An officer from the Director of Children Services conducted a home visit and she filed a report dated January 13, 2022. She established that the applicants are financially and physically capable of providing for the up keep and education of the child. She also observed that the home is in a well secured environment that would be favourable and conducive for the child's growth and development. The minor was jovial and very active. It was her recommendation that the Applicants be granted the opportunity to adopt the minor for the reasons that the child stands to gain from the opportunities provided by becoming their son. For the reasons that he will grow in loving and stable home.
7. This is a local adoption and from the reports of Buckner Kenya Adoption Services he Director of Children Services and the guardian *ad litem* the applicants have fulfilled all the legal requirements necessary for the adoption of the child.
8. With regard to the statutory age requirement the applicants are above the age of 25 years but are below the age of 65 years. They are more than 21 years older than the child they wish to adopt and are therefore within the age bracket provided for under section 158(1)(a) of the *Children's Act*. The Applicants were found to have no prior convictions and have been cleared by the Directorate of Criminal Investigations as indicated in Certificate's Serial No. PCC-AAAOMXW8 and PCC-R7TDW9W filed pursuant to section 158(3)(b) of the *Children's Act*
9. The consent of the biological parents was dispensed with since the child was abandoned at infancy and the parents were not traced to give their consent. The child has been under the continuous custody and care of the Applicants from June 2021. The child was present virtually in court during the hearing and appeared to have bonded well with the Applicants. The proposed legal guardians for this matter are MMG and KNM which consent is backed by an affidavit sworn on October 4, 2021.
10. Article 53(2) of *the Constitution*, provides the overarching principle which must apply whenever any decision concerning a child is to be considered. The said Article provides that:

“A child's best interests are of paramount importance in every matter concerning the child.”

This principle finds a firm place in the law in section 4(2) and 4(3) of the *Children's Act* No. 8 of 2001 and is echoed by article 4 of the *African Charter on the Rights and welfare of the Child* which provides that:

“in all actions concerning the child undertaken by any person or authority, the best interest of the child shall be the primary consideration”
11. From the foregoing, I find that it is in the best interest of the child to be adopted by the applicants. Reasons wherefore, I allow the prayers sought in the Originating Summons dated October 4, 2021 and order as follows:



- i. The applicants JGM and JCWG be and are hereby allowed to adopt Baby AC who shall henceforth be known as JMG.
- ii. His date of birth shall be presumed to be July 15, 2020 and the place of birth shall be Murang'a.
- iii. MMG and KNM are hereby appointed as the legal guardians in the event that the applicants die, or are incapacitated by ill health.
- iv. The Registrar General be and is hereby directed to enter this order in the Adopted Children's register.
- v. The Director of Immigration be and is hereby authorized to issue the child with a Kenyan passport.
- vi. The guardian ad litem be and is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF APRIL, 2022.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence of

..... Advocate for the Applicants

