



REPUBLIC OF KENYA



**In Re Baby BF (Adoption Cause E131 of 2021)
[2022] KEHC 3244 (KLR) (Family) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 3244 (KLR)

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

FAMILY

ADOPTION CAUSE E131 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 BF**

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. 678634. They have not been blessed with children of their own. They wish to adopt a female child known as Baby BF vide the Originating Summons dated October 4, 2021. They have filed another Application being Adoption Cause No. E130 of 2021 in which they wish to adopt another child. That matter is also before this court.
2. From the pleadings, the 1st Applicant is a pastor at the ----- Thika, which is run by Nairobi ----- and the 2nd Applicant is a ----- Christian School and scholarship fund which is managed by the Nairobi ----- . They reside in ----- 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 August 17, 2020 in [particulars withheld] area, Naivasha county. The matter was reported at Naivasha police station and booked as OB No. 4/17/08/2020. The minor was admitted at the Naivasha sub – county hospital for medical examination and upon discharge from hospital, was placed at New Life Home Trust - Nyeri for care and protection pending a committal order.
4. On 9th September, 2020 the children’s court sitting at Naivasha vide Protection and Care Case No. 73 of 2020, committed the minor to New Life Home Trust – Nyeri. On 9th April, 2020 the Naivasha



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 2nd June, 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 13th may, 2021, declaring the child free for adoption. The guardian ad litem Victoria Waiyego Muthoni filed a report dated 11th November, 2021 which was favourable and recommended the adoption of the child by the Applicants.
6. An officer from the office of The Director of Children Services conducted home visits and established that the Applicants are financially and physically capable of providing for the up keep and education of the child. She filed a report dated January 13, 2022 recommending the adoption for the reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants. Further that the adoption would enable her to grow up in a stable home.
7. This is a local adoption and from the reports of Buckner Kenya Adoption Services, the Director of Children Services and the guardian ad litem the Applicants have fulfilled all the legal requirements required for the adoption of the child. 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. From the reports on record 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. She also appeared to be in good health and vibrant. The proposed legal guardians for this matter are Michael Murimi Gitari and Keziah Nyabucha Muniu which consent is backed by an Affidavit sworn on 4th October 2021.
8. Concerning the requirements under section 158(1)(a) of the *Children's Act* both the Applicants are above the age of 25 years, but are below the age of 65 years. They are both more than 21 years older than the child they wish to adopt and are therefore within the statutory age bracket.
9. The Applicants were found to have no prior convictions and have been cleared by the Directorate of Criminal Investigations, certificate of Serial No. PCC-AAAOMXW8 and PCC-R7TDW9W respectively, were annexed as required under Section 158(3)(b) of the Children's Act
10. Having considered all the foregoing, the most important issue in an Application of this nature is the best interest of the child. 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, this court is satisfied 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 4th October, 2021 and order as follows:
 - i. The Applicants JGM and JCWG be and are hereby allowed to adopt Baby BF who shall henceforth be known as JMG.



- ii. Her date of birth shall be presumed to be 17th August, 2020.
- iii. She is presumed to have been born in Kenya in accordance with article 14(4) of the Constitution, and the place of birth shall be Naivasha.
- iv. Michael Murimi Gitari and Keziah Nyabucha Muniu are hereby appointed as the legal guardians in the event that the Applicants die, or are incapacitated by ill health.
- v. The Registrar General be and is hereby directed to enter this order in the Adopted Children's register.
- vi. The Director of Immigration be and is hereby authorized to issue the child with a Kenyan passport.
- vii. 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

