



**In re BP (Minor) (Adoption Cause E009 of 2021)
[2022] KEHC 12108 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 12108 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E009 OF 2021
JO NYARANGI, J
APRIL 28, 2022**

BETWEEN

SLA 1ST APPLICANT

ABO 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. Through an Originating Summons dated September 6, 2021, the applicants herein sought for orders that; baby BP be declared a Kenyan citizen by birth; the requirement for consent pursuant to section 158 and 159 be dispensed with ; upon making an adoption order the child be known as EWO0; the applicants herein be authorized to adopt baby BP; upon making an adoption order, Mr TOAI and Mrs SJAA be appointed legal guardians of the child as provided for under section 164 of the [Children Act](#) and the Registrar General to enter the adoption order in the adopted children’s register.
2. The summons herein is anchored on the particulars of the statement in support of the adoption application jointly sworn by the applicants on September 6, 2021 plus averifying affidavit sworn on the same date.
3. The applicants born on October 12, 1978 and March 18, 1980 respectively are husband and wife who celebrated their monogamous marriage on August 5, 2012. Professionally, the 1st applicant is a graphic designer who is engaged in private practice. The second applicant is also a business lady who is working with the husband in his business.
4. Despite their cohabitation for about 10 years now, the applicants have not been blessed with a child of their own. Consequently, they opted to adopt a baby to fulfill the desire to have a baby. Besides, their motivation to adopt the baby has also been propelled by the desire is to help a child in need of support.



5. Regarding the baby estimated to have been born on May 19, 2020, he was found abandoned in a bush within Kangemi near Kaptagat camp on May 22, 2020. The baby was allegedly rescued by a good Samaritan known as Josephine Nekesa Alias Masaa. The incident was reported at Kabete police station vide OB No xx/xx/2020.
6. The child was subsequently admitted at Nest children home on May 23, 2020. The minor was later on December 13, 2020, formally committed to the same institution for a period of 3 years vide Nairobi Children's court P and C Case No 252 of 2020.
7. Despite every effort made by little Angels Network and the police department in tracing the parents and or relatives of the baby, it was all in vain. This is evidenced by the Kabete police station letter dated December 9, 2020.
8. Six months having lapsed since the abandonment of the baby, the process of adoption commenced. Subsequently, the child was declared free for adoption by Little Angels network services through their case committee meeting held on March 3, 2021. A certificate S/No 002135 was issued to that effect.
9. Consequently, the Originating Summons was filed. Pursuant to the filing of these proceedings the applicant filed a chamber summons dated September 6, 2021 seeking the appointment of Irine Anyango Oremo as the guardian ad litem. Via its orders made on January 27, 2022 the said IA was appointed as a guardian Ad litem. The court directed the Director Children Services and guardian Ad litem to file their respective social inquiry reports within 30 days.
10. Subsequently, the Director Children Services filed his report on March 9, 2022 thus recommending the adoption. Equally, the guardian ad litem filed hers on February 24, 2022 also recommending the adoption. On the other hand, Little Angels Network Services filed its report on April 8, 2021 thus approving the adoption.
11. During the hearing, the applicant urged the court to allow the application. They acknowledged the consequences of these adoption proceedings and that the same is permanent.
12. I have considered the application herein, particulars in support plus various witnesses' testimonies. The subject herein is a case of abandonment by an unknown person. Every effort to trace the parent or close relatives has been futile. This is a clear from the a foresaid final letter from Kabete police station and Little Angels Services' social inquiry report. For those reasons the requirement for consent pursuant to Section 159 of the *Children Act* is dispensed with.
13. Regarding the child's national status, Article 14 (4) of the *Constitution* is clear on such situations. According to that provision, a child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known is presumed to be a citizen by birth. To that extent, the child herein is presumed to be a Kenyan citizen by birth having been found in a bush within Kangemi area which is within the republic of Kenya.
14. Pursuant to Section 157 of the *children Act*, any child who is resident within Kenya may be adopted whether or not the child was born in Kenya or not. Besides, the child herein who is above six weeks in compliance with section 156 has been declared free for adoption in accordance with Section 157 of the *Children Act*.
15. The child was placed under the care and control of the applicants on April 20, 2021. Regarding the applicants' age, they are adults aged between 25 years the minimum age required and 65 years the maximum age requirement in compliance with section 158 of the *children Act*. In view of the above, the child is suitable for adoption.



16. Regarding the applicants' suitability, they have been described as financially stable with a combined monthly income of Kshs 90,000 being the earnings from their business. They have also been described by all stake holders as Christians with no criminal record and morally upright.
17. The applicants do appreciate the consequences of adoption. They have embraced the child like their biological child. They have equally bonded with the baby. Considering that this is local adoption, I am satisfied that the applicants have met the necessary conditions to adopt the baby.
18. As to whether the adoption is in the best interests of the child, this court is guided by Article 53 (2) of the *Constitution* and Section 4 (2) and 3 of the *children Act* which underscores consideration of the paramount principle of a child's best interest when making any decision concerning a baby. The same position is further emphasized in Article 3 of the *UN Convention on the rights of a child*.
19. In the instant case, the child was found in a desperate situation of abandonment while in his infancy stage. The act of abandonment was definitely in bad faith given the risks the child was exposed to in the bush. like any other ordinary child, the baby is need of care and protection. Besides, he needs provision of basic necessities like food, shelter, education, clothing and medial case. The baby has already integrated with the adoptive family. To separate him will be disastrous and not in the best interest of the child. In the circumstances of this case, it is my finding that the adoption herein is in the best interests of the child hence the application is allowed with orders;
 - a. The applicants herein are authorized to adopt baby BP who henceforth shall be known as EWOO
 - b. That the child's date of birth shall be May 19, 2020 and place of birth Kangemi.
 - c. That the consent of the biological parents is dispensed with
 - d. The child is hereby declared a Kenyan citizen
 - e. The guardian ad litem is hereby discharged
 - f. The Registrar General herein is directed to enter this adoption order in the adopted children's register.
 - g. That TOAI and Mrs SJAA be and are hereby appointed as legal guardians of the child in the event of any eventuality befalling the applicants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 28TH DAY OF APRIL, 2022

J. N. ONYIEGO

JUDGE

