



**In Re EO alias EE (Baby) (Adoption Cause 1 of 2021)
[2022] KEHC 579 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 1 OF 2021**

**JN ONYIEGO, J
APRIL 28, 2022**

BETWEEN

GODFREY MUMBURA NGUNJIRI 1ST APPLICANT

LUCY WAMBUI KAMAU 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The applicants herein GMN (hereafter the 1st applicant) and LWK (hereafter the 2nd applicant) moved to this court on 8th February 2021 vide an Originating Summons dated 29th January, 2021 pursuant to sections 11,154,156,157,158,159,160,164 and 170 of the Children Act and article 14(4) of the Constitution seeking orders that;
 - a. The child herein baby EO alias Baby EE be declared a Kenyan citizen;
 - b. The court to dispense with the requirements for consent to the adoption under section 158 of the children Act.
 - c. GMN and LWK be authorized to adopt baby EO alias Baby EE.
 - d. Upon adoption, the child be known as EFN
 - e. Upon the making of the adoption order DMN be appointed guardian of the child.
 - f. The registrar General to enter the adoption in the adopted children’s register
 - g. Costs of the application be in the cause.
2. The application is supported by averments contained in the statement in support jointly sworn on 29th January, 2021 by the applicants.



3. The applicants are husband and wife having celebrated their monogamous marriage at Gospel Revival Centre church on 2nd December, 2006. Prior to their marriage, the 2nd applicant had a child known as DK (26 years) over whom the 1st applicant readily accepted and acquired full parental responsibility.
4. In terms of economic engagement, the 1st applicant is a taxi operator while the 2nd applicant is a tailor and business lady dealing with rice supplies
5. The motivation to adopt the baby has been propelled by the desire to have children and also render service to a child in need of such service.
6. Concerning the subject, he is said to have been born out of wedlock on 14th March 2017 to RAO and one G who allegedly disappeared and disowned R upon being told she was pregnant.
7. That RA later on got married to one JOO who expressed his unwillingness to take care of the baby thus contributing to the two offering the baby to Little Angles Network for adoption so as to preserve their marriage.
8. On 11th April, 2017, R signed her initial consent after being explained to the consequences of her action. Consequently, the child was admitted to abandoned baby center on 11th April, 2017 for care and protection. Later, on 12th June, 2017 R signed her second consent. As regards the biological father's consent, it was stated that he had disappeared to unknown place upon discovering that R was pregnant.
9. On 14th June, 2017, the child was committed to the legal custody of Francis Jones Dagoretti children's Center vide Nairobi Children's court case No 284/2017.
10. Later, in its case committee meeting held on 25th November, 2017 Little Angles Network Services declared the baby free for adoption and a certificate S/No 000815 issued to that effect.
11. Upon instituting these proceedings, the applicant filed chamber summons dated 29th January, 2021 seeking the appointment of a guardian Ad litem. Subsequently, one D MM was on 17th March, 2021, appointed as such. The said guardian ad litem and the Director Children services were then directed to file their respective social inquiry reports within 45 days.
12. Consequently, the Director Children services filed his report on 29th November, 2021 recommending the adoption. On 4th May 2021 the guardian ad litem filed his report also recommending the adoption. The little angles Network filed its report dated 10th September, 2018 also approving the adoption.
13. During the hearing, the applicants prayed for orders sought in the originating summons. They expressed their desire to look after the baby like their biological baby and that they had understood the consequences of adoption process. David Kamau their son(pw6) also expressed his desire to have a brother and that he was not opposed to the adoption.
14. I have considered the application herein, supporting materials and evidence by various witnesses. Issues that emerge for determination are;
 - a. Whether the child is available for adoption
 - b. Whether the applicants are suitable to adopt the baby
 - c. Whether the adoption is in the best interest of the baby
15. The adoption herein relates to a child voluntarily given out by the mother on grounds that he was born out of wedlock and that his mother's current husband is not willing to take him up as a step son. In



view of the fact that the child has been given by the mother who signed a consent to that effect, the need for consent pursuant to section 159 does not apply.

16. Under section 157 of the *children Act*, any child who is resident within Kenya may be adopted whether born in Kenya or not. This child having been born in Kenya and subsequently declared free for adoption is suitable for adoption.
17. As to the suitability of the applicants who are aged 42 and 49 years respectively, they are qualified to adopt the baby in terms of their age limit which falls within the minimum 25 years and maximum 65 years age bracket provided under section 158 of the *Children Act*. Concerning their social and economic status, both stakeholders described them as financially stable earning total of Kshs 50,000 per month out of their business; they are Christians with no criminal record, morally upright, loving and caring. Having fully understood the consequences of adoption and further having integrated with the child, I find them suitable to adopt the baby.
18. As regards the best interest of a child, it is clear that he has unwilling biological parents who are not ready to take care of him. He has basically been disowned. Like any other child, he is in need of parental love and care, provision of basic necessities like food, clothing; shelter, medical care and education which the applicants are ready to prove. Further, the baby desires parental guidance, mentorship, emotional and physiological support.
19. Its trite that before making any decision affecting a child, the court must be guided by the paramount principle of the best interests of a child pursuant to article 53 (2) of *the Constitution* and section 4 (2) and (3) of the *Children Act*.
20. In a nutshell, the application herein is in the best interests of the child and the prayers sought allowed with orders that;
 - a. The applicants herein are hereby authorized to adopt baby EO alias baby EE who henceforth shall be known as EFN.
 - b. The child's date of birth shall be 14th March, 2017.
 - c. The guardian ad litem is discharged.
 - d. The Registrar General is ordered to enter the adoption order in the adopted children's register.
 - e. DMN is appointed as legal guardian to the baby in case of any eventuality befalling the applicants.

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

J. N . ONYIEGO

JUDGE

