



**In re Baby JJ (Adoption Cause E009 of 2021)  
[2022] KEHC 12752 (KLR) (18 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 12752 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E009 OF 2021  
JO NYARANGI, J  
AUGUST 18, 2022  
IN THE MATTER OF BABY JJ**

**IN THE MATTER OF**

**AMK ..... 1<sup>ST</sup> APPLICANT  
EMT ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Through an originating summons dated October 10, 2021, the applicants herein moved this court for orders as follows;
  - a. That the requirements of sections 158 (1) of the *Children Act* be allowed as provided for by section 159 (1) of the Act.
  - b. That IM in the said republic be appointed guardian ad litem in this case
  - c. That the applicants be authorized to adopt baby JJ and the baby be known as ALM.
  - d. That MK and MJSW be appointed the legal guardians of the child.
  - e. That the minor be considered a Kenyan citizen.
  - f. That the director of Children's department to investigate the case and file a report.
  - g. 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. The application is supported by an affidavit of particulars sworn by the applicants jointly on October 10, 2021. The applicants herein are a couple who celebrated their statutory marriage on August 29, 1998. The first applicant born in 1968 is a pastor by training while the second applicant born on September 5, 1972 is a business lady operating her own saloon.



3. Despite their cohabitation for all that long, their marriage has not been blessed with any biological child due the 2<sup>nd</sup> applicant's medical condition. Their motivation to adopt the baby has been propelled by the desire to have a child who will become their heir and also the urge to parent.
4. Regarding the baby presumably born on May 14, 2019, he was found abandoned at a construction site in Githurai 44 on the aforementioned date. The incident was reported at Kimbo police station and recorded vide OB no 13/13/15/19. He was subsequently admitted at Kiambu level 5 hospital for protection and care. A report was also made to the children office Kiambu Sub county who made arrangements for the minor's admission at Imani children's Center on May 29, 2019 for further protection and care.
5. The minor was formally admitted at the said center on June 4, 2019 vide Kiambu children court protection and care case No 45 of 2019 for a period of six months. Despite every effort made to trace the relatives to the baby, none came to fruition. This is evidenced by Kiambu police station's final letter dated September 21, 2020. Six months having lapsed from the date of abandonment, the child was subjected to adoption process. On December 9, 2020, he was declared free for adoption by the Kenya Children's Home Adoption Society case committee and a freeing certificate S/No 1567 issued pursuant to section 156 of the *Children Act*. He was subsequently placed with the applicants in compliance with section 157 of the *Children Act*.
6. Upon institution of these proceedings, IM was on March 17, 2022 appointed as a guardian ad litem and the Director Children services ordered to file their respective social inquiry reports within 30 days.
7. On May 23, 2022, the Director Children Services filed his social inquiry report thus approving the adoption application. Equally, the guardian ad litem filed his report on May 10, 2022 while the Kenya Children's Homes Adoption Society filed theirs on November 26, 2021 also recommending the adoption herein. I have considered the application herein, materials in support and testimony by various witnesses. Issues for determination are;
  - a. Whether the baby herein is available for adoption.
  - b. Whether the applicants are suitable to adopt the minor.
  - c. Whether the adoption is in the best interest of the baby.
8. The baby herein was abandoned at a construction site on 14<sup>th</sup> May, 2019 the same day he was presumed to have been born. Every effort to trace the parents and or close relatives was unsuccessful. This fact was confirmed by the Kiambu police station office through their initial letter dated 3<sup>rd</sup> June, 2019 and later their final letter aforesaid. In the absence of any claimant, the requirement for consent pursuant to Section 158 and 159 of the *Children Act* is dispensed with.
9. As to the baby's nationality, article 14(4) of the *Constitution* provides that any child found abandoned within the Republic of Kenya and whose nationality or parents are not known is deemed to be a Kenyan citizen by birth. In the circumstances of this case, the baby is declared to be a Kenyan citizen.
10. Besides, under section 157 of the *Children Act*, any child who is a resident in Kenya whether born in Kenya or not is eligible for adoption. In the instant case, the said child was found abandoned within the Republic of Kenya and therefore a resident of Kenya hence qualifies for adoption. The child has since been declared free for adoption and subsequently placed with the applicants. It is my finding that he has met all the requisite requirements for adoption.
11. As to the suitability of the applicants, they have been approved and recommended by all stakeholders who filed their respective reports indicating that; they were financially stable earning a combined



monthly income of over kshs 60,000 per month; morally and socially fit; Christians with no criminal record and understands the consequences of adoption. Since placement, they have fully bonded with the baby. In terms of age requirement, they are above 25 years and below 65 years thus complying with section 158 of the *Children Act*. Considering that this is a local adoption, I am satisfied that they have met the requisite conditions hence suitable to adopt the baby.

12. Concerning the best interest of the child provided under article 53 (2) of *the Constitution* and section 4 (2) and (3) of the *Children Act*, one would have to look at the circumstances and environment under which the baby was found abandoned. Nobody has come to claim him. The abandonment of a child aged one-day old was an immoral act intended to expose the baby to danger hence risking his life.
13. The baby has found good, loving and caring parents. Like any other ordinary baby, he needs basic provision like food, clothing, shelter, education and medical care which the applicants are capable of providing. It is my finding that it is in the baby's best interest that he be adopted.
14. In a nut shell, it is my holding that the application is merited and therefore allowed with orders that;
  - a. The applicant herein AMK and EMT are allowed to adopt baby JJ who hence forth shall be known as ALM.
  - b. That the date of birth of the baby shall be May 14, 2019 and place of birth Githurai 44 Kiambu County,
  - c. The consent of the biological parents or guardian is dispensed with.
  - d. The child is declared to be a Kenya citizen.
  - e. The guardian ad litem is discharged.
  - f. The Registrar General is directed to enter the adoption order in the adopted children's register.
  - g. MK and MJSW are hereby appointed as legal guardians of the child in case of any eventually befalling the applicants.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 18<sup>TH</sup> DAY OF AUGUST, 2022**

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**J. N. ONYIEGO**

