



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby NN (Adoption Cause 7 of 2021)
[2022] KEHC 27093 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 27093 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
ADOPTION CAUSE 7 OF 2021**

REA OUGO, J

OCTOBER 31, 2022

IN THE MATTER OF ADOPTION UNDER SECTION 154 OF THE CHILDREN ACT 2016

AND

IN THE MATTER OF ADOPTION OF BABY NN

IN THE MATTER OF

NGM & AO APPLICANT

RULING

1. NGM & AO, herein after referred to as the Applicants have filed an application seeking to adopt Baby NN. In a chamber summons application dated 9th November 2021 the applicants are seeking that ROM be appointed as Guardian *ad litem* to Baby NN.
2. In an affidavit dated 9th November 2021 the proposed guardian *ad litem* depones that he knows the applicants and that he is willing to serve as guardian *ad litem* to baby NN. That his willingness has not been influenced by any external considerations. That he is a civil servant employed by Ministry of Education as senior Head Teacher in the Public service with sufficient income. That he has no adverse interest to the said child to be adopted since he is family person with three children. When examined in court Ronald testified that he was informed of is role as guardian *ad litem*. That the minor has to be taken care off and that its his duty to report the progress. That he knows that the applicants are in the USA. He has not visited them in the USA but they are always in touch with them. That the applicants were last in Kenya in 2021. That the 1st applicant is the brother of his mother and the wife is his aunty. That the minor is his cousin and she stays with her uncle. That her mother is a single parent and he does not know the minor's father. He does not stay with the minor. That the minor stayed with the applicants when they last visited Kenya.
3. Caroline Okuta from Little Angles Network (the agency) testified that they freed baby NN for adoption and issued a Certificate of Declaring a Child Free for Adoption on the 2nd September 2021.



That the guardian *ad litem* understands his role and that the child's biological mother has given her consent to the adoption.

4. In considering the application am guided by the provisions of section 160 of the [Children Act](#) 160 of 2016. It provides as follows:

Guardian *ad litem* for the child

160.

- (1) For the purposes of any application for an adoption order, the court shall upon the application of the applicant or of its own motion, appoint guardian *ad litem* for the child pending the hearing and determination of the adoption application.
 - (2) It shall be the duty of the guardian *ad litem* to—
 - (a) safeguard the interests of the child pending the determination of the adoption proceedings;
 - (b) investigate and apprise the court as to the circumstances pertinent to the adoption of the child in the prescribed manner;
 - (c) make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child;
 - (d) intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act;
 - (e) undertake such duties as the court may from time to time direct or as may be prescribed by the rules made under this Part.
 - (3) Where arrangements for the adoption of any child have been made by an adoption society, neither the society nor any member thereof, shall be appointed guardian *ad litem* of that child for the purposes of its adoption.
 - (4) The appointment of a guardian *ad litem* shall expire upon the making of a final order by the court under this Part unless the court, having regard to the interests of the child, extends the period of the appointment.
5. The applicants are residents of the USA. It is not clear from the proposed guardian *ad litem* when the applicants were last here in Kenya and how long they stayed or had the minor with them. The proposed guardian too has not visited the applicants in the USA to state or report on the lifestyle of the applicants. How then will he investigate and apprise the court as to the circumstances pertinent to the adoption of the child in the prescribed manner if he has not visited the applicants in their home in the USA where the proposed minor would move to be if the adoption is granted. He was unable to explain how he will do this or how he would safeguard the interests of the child.
6. As a Court of law I must adhere to the provisions of the Act bearing in mind the child's best interest in the circumstances. In my view I find that the applicant will not be able to perform his role as required in law and I decline to grant the application to appoint him as Guardian *ad litem*. There shall be no order as to costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT BUNGOMA THIS 31ST DAY OCTOBER 2022.

R. E.OUGO



JUDGE

In the presence of:

Mr. Nyambati present for Applicants

Aphline - C/A

