



REPUBLIC OF KENYA



**In re AB (Minor) (Adoption Cause E004 of 2022)
[2022] KEHC 15744 (KLR) (22 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15744 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E004 OF 2022
MW MUIGAI, J
NOVEMBER 22, 2022
N THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY AB (MINOR)**

IN THE MATTER OF

**RNO 1ST APPLICANT
JMM 2ND APPLICANT**

JUDGMENT

1. The applicants, RNO and JMM (“the applicants”) sought by their application to be allowed by this court to adopt AB (hereafter “the child”).
2. *Vide* originating summons application dated October 1, 2021 the applicants sought among other orders, that this Court MNM be appointed as the child’s guardian ad Litem, that the Director of Children’s Services to conduct investigations as to the suitability and fitness of the applicants to adopt the child and submit a report. MNM was appointed guardian ad litem on March 30, 2022.
3. The applicants further sought an order that upon adoption the child be known as AMMO.
4. The applicants also sought to have the court appoint PMD and MCM as legal guardians of the child and signed consent/affidavit on April 2, 2019.
5. The child (Baby AB) who is the subject of the present adoption proceedings was presumably born on May 19, 2019. The child was found abandoned at Our Lady of Visitation Catholic Church in Makadara by good samaritans one Fr David Kimani of Tel No 0722XXXXXX and Mary Wanjiku of Tel No 0723XXXXXX. They took the baby and reported the matter to Jogoo Police Station.
6. The matter was recorded and booked *vide* OB No 34/19/6/2019. The child was placed at New Life Home Trust on the same day for temporary Care and Protection pending tracing of his relatives. The



child was committed to New Life Home Trust-Kilimani where the child was committed for Care and Protection at the Nairobi Children’s Court on January 22, 2020 *vides* Protection and Care Case Number 49 of 2019 for three years period. The Jogoo Police station confirmed that no one went to the station to claim for the abandoned child and their efforts to trace the kindred of the child have been futile. The minor was freed for adoption by the Kenya Children’s Homes Adoption society’s Case Committee on its sitting of August 5, 2020 and freeing Certificate Serial No xxxx issued pursuant to section 156(1) of the [Children Act 2001](#).

7. The following documents were availed from New Life Home Trust- Kilimani for baby AB;
 - Initial Police letter
 - Referral letter by the sub- County Children’s office
 - Admission Form
 - HIV test result & Lab request form
 - Committal summary
 - Committal order
 - Final Police letter
 - Tracing report
8. Pursuant to section 156(1) of the [Children Act](#), Little Angels Network, the relevant adoption society, prepared and filed in court a favorable report in respect of the proposed adoption of the child by the applicants. Another report in respect of the proposed adoption of the child by the applicants was prepared by the director of children’s services, and this report was similarly in favor of the proposed adoption. The guardian *ad litem*, MNM, also filed the statutory report pursuant to section 160(2) of the [Children Act](#) in which she noted that the proposed adoption of the child by the applicants would be in the best interests of the child.
9. The Little Angels Network Agency filed their report dated July 24, 2019. On October 17, 2022 Mr Joshua Wambua from the agency appeared in court and confirmed that the child subject of these proceedings was found abandoned. The child was rescued and admitted for care and protection on June 19, 2019 *vide* Protection and Care Case No Children Case No 49 of 2019. Efforts to trace the family/parents of the child were fruitless. The child was declared free for adoption on August 5, 2020.
10. According to Little Angels Report, the applicants jointly approached Little Angels Network on April 20, 2019. The 1st applicant herein R had three children from his first wife (whom he had married through customary Law) namely; DDO – 25 years old, BB aged 23 years and NO aged 13 years. The 1st applicant later married the 2nd applicant and they later officialized their marriage in the year 2009 *vide* marriage certificate serial No 134XXX.
11. The couple had not been able to get children together as the 2nd applicant has fibroids. The two adult children have given their consents to allow the 2nd applicant adopt a child. Their consents are dated May 22, 2022 and June 22, 2019 respectively. The applicants are financially stable as the male applicant has a stable income from his business and brings home kshs 40,000/- to 80,000/- while the female applicant has a net of 200,000/- per month. They own several assets namely; two apartments one in Athi River and another one in Mlolongo, plots in Kwale, Dalgube, Ramisi, Kangundo and a car. After various visits and interviews were done the case committee approved the adoption on July 24, 2019. The child was placed in their care on September 9, 2020. The child has bonded well with the applicants. The adoption was recommended.



12. The Director of Children Services through a report dated July 4, 2022 in respect of the proposed adoption of the child by the applicants was prepared by Emily Kimanzi the Machakos Sub- County Children's Officer. On October 7, 2022 the said officer appeared in court in support of this adoption. The report contains family and professional background information of the child's adoptive parents.
13. The applicants were married in the year 2009 *vide* marriage certificate serial No 134XXX. The 1st applicant's biological children have given their written consents. The 1st applicant is a business man while the 2nd applicant is a financial analyst. The two have not been able to have a child of their own due to 2nd applicant's medical condition. The extended family are in support of this adoption. The 2nd applicant's brother is the legal guardian of the minor. They own properties in different parts of the county but the properties are all registered under the names of the 2nd applicant. They include a 3 bedroom bungalow at Great wall, a 3 bedroomed bungalow at paradise part in Athi River, 2 acres of land at Koma area, plot at Kwale 1 acre and $\frac{3}{4}$ acre of land at Ramisi. The Directorate recommends the adoption as the minor has been declared free for adoption by a registered adoption agency, the bonding has been successful, the applicants are stable financially and shall give the minor an inheritance, they enjoy the support of their extended family members in this process and it is for the minors best interest so that he can have a family to belong to.
14. The guardian *ad litem*, MNM filed her report on May 19, 2022 in support of these adoption proceedings. She stated that she has interacted with the adoptive parents for several years. She has visited the family on several occasions. The child and the adoptive parents have bonded well. The Applicants are very hardworking, financially, physically and emotional capable. They also have christian values hence the child will receive the best possible care and protection. She recommended the adoption.
15. The legal guardians PMD and MCM filed their letter of consent dated April 2, 2019. MCM is a biological brother to the 2nd applicant. The letter of consent stated that they understand that as the legal guardians they are expected to take over parental responsibility over the minor in case of death of the applicants or total incapacitation and disability. They recommend the adoption.
16. All the statutory reports that have been filed in respect of the proposed adoption of the child by the applicants have recommended that this court allows the adoption of the child. This court has evaluated the facts of this adoption. This is a local adoption. It is evident that the applicants have fulfilled all the legal requirements relative to the adoption of the child.
17. The home visits by the guardian *ad litem*, the Adoption Society and the Director of the Children's Services established that the applicants are financially and socially stable and has emotional capability to provide for the upkeep and education of the child and give parental care. This court observed the applicants with the child in court and it was evident that in the period that the applicants has had the custody of the child, the child has bonded well. The child considers the applicants to be his parents.

DISPOSITION

1. On the basis of a careful examination of the documents presented before this court as well as the observations made therein, this court has formed the opinion that it would be in the best interest of the child to be adopted by the applicants. Hence, this court allows the applicants application.
2. The applicants, RNO and JMM are hereby allowed to adopt Baby AB. Henceforth, the child shall be known as AMMO.
3. The child's date of birth is May 19, 2019 and the place of birth shall be Nairobi County.
4. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.



5. PMD and MCM shall be the legal guardian of the child should such eventuality arise.
6. This court directs the Registrar General to duly enter this order in the Adoption Register.
7. The Guardian *ad litem* is hereby discharged.

It is so ordered.

DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS THIS 22ND DAY OF NOVEMBER, 2022 (VIRTUAL CONFERENCE).

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF:

RO & JM - APPLICANTS

GEOFFREY/PATRICK - COURT ASSISTANT(S)

