



In re Abandoned Unknown Baby Girl aka BM aka TA (Adoption Cause E015 of 2024) [2025] KEHC 397 (KLR) (14 January 2025) (Judgment)

Neutral citation: [2025] KEHC 397 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E015 OF 2024**

G MUTAI, J

JANUARY 14, 2025

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF AN
ABANDONED UNKNOWN BABY GIRL, AKA BM, AKA TA BY WAW AND JAI**

BETWEEN

WAW 1ST APPLICANT

JAI 2ND APPLICANT

AND

BUCKNER KENYA ADOPTION SERVICES RESPONDENT

JUDGMENT

1. The Joint Applicant seek, vide the Originating Summons dated 21st August 2024, the following orders:-
 1. Pursuant to Article 14(4) of *the Constitution* of Kenya, 2010 and Part II, Section 7(1) of the *Children Act*, 2022, this Honourable Court be pleased to declare the child Abandoned Baby Girl aka BM, aka TA a Kenya citizen by birth;
 2. Pursuant to the provisions of section 187 of *the Constitution* Act, 2022, this honourable Court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of section 186 of the *Children Act*, 2022;
 3. The Applicants, WAW and JAI be authorized to adopt Abandoned Baby Girl, aka BM, aka TA;
 4. Upon the making of the adoption order, the child to be known as BMA;
 5. Upon the making of the adoption order NAS and JI be appointed Legal Guardians of the child as provided for by the provisions of section 195 of the *Children Act*, 2022;



6. Upon the making of the adoption order the Registrar General does make an entry in the Adopted Children Register recording the adoption and the estimated date of birth of the child as 12th December 2022 as provided for by section 201 of the *Children Act, 2022*; and
7. The costs of this application are costs in the cause.
2. The said summons was supported by various documents attached, which this Court has perused.
3. In the Affidavit in support of the application, the Joint Applicant stated that they were born on 4th May 1976 and 8th July 1972, respectively. They are Kenyan citizens of the African race and are of sound mind. They profess the Christian religion. The Joint Applicants got married in 2009. They do not have biological children of their own.
4. The Joint Applicants live in Miritini in Mombasa. They have resided in the said place for a period exceeding 10 years. They have no intention of leaving Kenya indefinitely at any time soon.
5. The child, the subject of these proceedings, has been with them since 26th June 2023, upon signing the Foster Care Agreement with Mahali Pa Maisha Infant Rescue Centre. They stated that they are financially stable. They intend to bring the child up in the Christian faith. They state that the proposed adoption has the support of their family members.
6. The child, the subject of these adoption proceedings, was presumably born on 12th December 2022. She was abandoned in a pit sewer in the Tuffoam area of Athi River Sub County within Machakos County. She was rescued by a good Samaritan who took her to Machakos Level 5 Hospital for treatment and/or management.
7. The incident was reported at Sabaki Police Station and recorded vide OB entry No. 08/12/12/2022. Upon discharge, the child was admitted at Mahali pa Maisha Infant Rescue Centre on 9th January 2023. She was committed to the institution by the Machakos Children's Court vide Protection and Care Cause No E001 of 2023.
8. Despite extensive searches, the parents of the child have not been traced. It is stated in the report of the Adoption Society that during the 6 months she was at the children's home, no one turned up to claim her.
9. The Joint Applicant filed a Chamber Summons dated 21st August 2024 vide which they sought to have NMM appointed as a guardian ad litem in respect of the instant adoption cause. Upon hearing the application on 23rd October 2024, this Court appointed her as the guardian ad litem. It directed her to visit the homes of the Joint applicants to assess their suitability and write the required report.
10. The Court issued a similar order to the Director of Children's Services. The guardian ad litem and the Director of Children's Services prepared and filed their reports, which I have read and considered in this judgment.
11. The matter proceeded by way of viva voce evidence. A total of 5 Witnesses testified. I will set out briefly their evidence below.
12. Irene Ogutu, a social worker with Buckner Kenya Adoption Services, was the first Witness. She testified that they vetted the Joint Applicants and declared the child a being free for adoption. The certificate freeing the child has serial number 0057 and is dated 19th June 2023. Even after the adoption application was filed, they made follow-up visits and prepared and filed a report dated 15th October 2024, which she produced. In her opinion, the Joint Applicants and the child had bonded. Ms Ogutu recommended the adoption.



13. Ms Njeri Mwangi of the Directorate of Children Services Mombasa was the second witness. She testified that she conducted a home visit on 15th November 2025. The report they wrote is dated 17th November 2024. She testified that the Joint Applicants reside in a secure neighbourhood. They have a stable marriage. The Joint Applicant had bonded well with the adoptive child. Ms Mwangi recommended the adoption.
14. The 3rd Witness was NMM. Ms M is the guardian ad litem in these proceedings. She testified that she visited the home of the Applicants on 2nd, 9th and 16th November 2024. She testified that based on her observations, the Joint Applicants and the child they had bonded. The parties related well and had taken to each other. She, too, recommended the adoption.
15. The 1st applicant was the 4th Witness. He is the husband of the 2nd applicant. He testified that they don't have biological children of their own. He stated that he was aware that adoption is permanent and irreversible and that the adoptive child would have a right to inherit from their estate if the adoption application is successful. He testified that if the adoption application is successful they propose to rename the child as BMA.
16. The last Witness was JAI. Ms I is the wife of the Mr A. She testified that they hadn't been successful in getting a child of their own. She is said that she was keen to adopt a child. It was her testimony that their families were supportive.
17. I have considered the application herein, the documents in support thereof and evidence of the various witnesses. The issues that emerge for determination are whether the child is available for adoption, if the applicants are fit to adopt the baby, and, most importantly, whether the adoption is in the best of the child.
18. I have already set out the circumstances under which the child was found. She was abandoned in a pit sewer in the Tuffoam area of Athi River Sub County within Machakos County shortly after her birth. Nobody has come forward to claim her. Given the period that has elapsed since the said occurrence, it is most unlikely that the biological parents of the child will ever turn up. Therefore, the need for consent pursuant to sections 186(8) and 187 of the *Children Act* 2022 is dispensed with. I am guided by the case of *In re HN (Baby)* [2020] eKLR, where the court stated:-

“As there is nobody laying claim over the baby, the requirement for consent is hereby dispensed with pursuant to Section 159(1) of the Children’s Act. In view of the above consideration, it is my finding that the child is available and suitable for adoption.”
19. Regarding the baby’s nationality, the evidence adduced shows that she was found abandoned immediately after her birth. Article 14(4) of *the Constitution* of Kenya, 2010 states that a child under eight years of age whose nationality and parents are unknown is presumed to be a Kenyan citizen by birth. Given this provision, the child herein is presumed to be a Kenyan citizen by birth.
20. Regarding age, the child is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive baby under Section 184 (b) of the *Children Act*, 2022. Further, Section 185(1) of the said Act states that any child who is a resident of Kenya, whether born in Kenya or not, is eligible for adoption. I do not doubt that the child is fit for adoption.
21. Concerning the Joint Applicants’ suitability, they are Kenyan citizens, aged 48 and 52 years, respectively, at the time of this judgment, which places them within the age bracket of not less than 25 years nor more than 65 years for an adoptive parent in compliance with Section 186(2) of the *Children Act*, 2022. From the records I have seen, the Joint Applicants have the means to care for the child they



- are adopting. They have no criminal records. Since the placement of the child in their joint custody, the child has fully bonded with them. The Joint Applicants understand the consequences of adoption and know that once an adoption order is made, it is permanent.
22. Consequently, I do not doubt that they meet the requirements to adopt the baby. I am guided by the case of *In re B (Baby)* [2018] eKLR, where the court stated:-
- “I am of the considered view that weighing all factors and the evidence placed before me, the applicants are of sufficient ability to bring up the child and to furnish her with appropriate support and maintenance within their resource base available to them.”
23. On the question of whether the adoption is in the best interests of the baby, I am guided by Article 53(2) of *the Constitution* of Kenya, 2010 and Section 8(1) and (2) of the *Children Act*, 2022 which underscores the best interests of a child as the primary consideration before making any decision concerning a baby.
24. Further, the court in the case of *In re MA (Baby)* [2021] eKLR stated:-
- “This court, in the case of *In re B (Baby)* [2018] eKLR, held that the purpose of Kenya’s Constitution and Children’s Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern, therefore, in every adoption cause is the best interest of that very child.”
25. The child herein was found abandoned. She, therefore, needs necessities like food, shelter, education and clothing. She has fully integrated with the Joint Applicants. It is obviously in the child’s best interests that this adoption application is allowed. I am guided by the case of *In re IK (Child)* [2020] eKLR, where the court stated:-
- “She needs parental care to grow up as a normal child with emotional and physical protection, which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and well-being of the child. As *the Constitution* and the law state, in all matters concerning a child, the child’s best interests are paramount.”
26. In my view, the application has merit. Consequently, I issue the following orders:-
1. I declare the child, Abandoned Baby Girl, aka BM, aka TA, a Kenyan citizen by birth;
 2. The consent of the biological parents of the child to the adoption is hereby dispensed with;
 3. The Joint Applicants, WAW and JAI are hereby authorised to adopt Abandoned Baby Girl, aka BM, aka TA;
 4. Abandoned Baby Girl, aka BM, aka TA, shall henceforth be known as BMA;
 5. I appoint NAS and JI as the Legal Guardian of BMA and entrust them with the responsibility of taking care of the child in the event the Joint Applicants become deceased or are otherwise permanently unable to take care of her before she attains the age of majority;
 6. The Register General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of BMA as being 12th December 2022 in the Adopted Children Register as provided for by section 201 of the *Children Act*, 2022; and
 7. The guardian ad litem, NMM, is hereby discharged.



27. I make no orders regarding costs as this is a non-contentious adoption cause.

28. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 14TH DAY OF JANUARY 2025. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Ms Ngugi, for the Joint Applicants; and

Arthur - Court Assistant.

