



In re Abandoned Unknown Baby Girl alias FG alias FG (Adoption Cause E016 of 2024) [2025] KEHC 396 (KLR) (14 January 2025) (Judgment)

Neutral citation: [2025] KEHC 396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E016 OF 2024
G MUTAI, J
JANUARY 14, 2025
IN THE MATTER OF THE CHILDREN ACT, 2022
AND
IN THE MATTER OF ABANDONED UNKNOWN BABY GIRL ALIAS FG ALIAS FG
AND
IN THE MATTER OF AN APPLICATION FOR ORDER OF ADOPTION OF
ABANDONED UNKNOWN BABY GIRL ALIAS FG ALIAS FG BY SNM & PMC
(THE JOINT APPLICANTS)**

BETWEEN

SNM 1ST APPLICANT

PMC 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The Originating Summons before me is dated 22nd August 2024. Vide the said Summons, the Applicants seek 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 Unknown Baby Girl, alias FG alias FG, a Kenyan citizen by birth;
 2. Pursuant to the provisions of Sections 187 of the Children 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 SNM and PMC be authorized to adopt Abandoned Unknown Baby Girl alias FG alias FG;
 4. Upon the making of the adoption order, the child to be known as HMS;
 5. Upon the making of the adoption order, VOO and LDC be appointed Legal Guardians of the child as provided for by the provisions of Section 188 of the [Children Act, 2022](#);
 6. Upon the making of the adoption order, the Registrar General does make an entry recording the adoption and the estimated date of birth of the child as 23rd April 2023 in the Adopted Children Register as provided for by Section 201 of the [Children Act, 2022](#); and
 7. The costs of this application be costs in the cause.
2. The Joint Applicants are Kenyan adult citizens of sound minds holding Kenya national identity card numbers 201XXXX and 1321XXXX, respectively. They got married to each other on 11th August 2007. S and P are Christians. They reside at Mtwapa in Kilifi County and have done so for the last 10 years. According to what they state in the application, they have no intention of leaving Kenya indefinitely.
 3. S and P received the child into their care on 17th December 2023 upon signing the foster care agreement with the House of Charity Children's Home. In their joint statement, they averred that they have the financial ability to take care of the child and that the proposed adoption has the support of their families. It was further stated that they have no criminal record.
 4. They proposed that LDC and VOO be the legal guardians of the child so as to safeguard her if they die before she reaches the age of majority. The Joint Applicants have 1 adopted child, MSJ, whose adoption was granted by this Court on 31st May 2023.
 5. Abandoned Unknown Baby Girl alias FG alias FG is presumed to have been on 23rd April 2023. She was abandoned, wrapped in a lesa, near the [Particulars Withheld] Bridge near [Particulars Withheld] School Kawangware, Nairobi. The good Samaritan who found the girl took the child to the Chief's office at Gatina. He handed over the child to Ms Grace Nekesa Manyasa, a Community Health Volunteer at the said place. The matter was reported at Muthangari Police Station and recorded vide OB NO 15/25/04/2023. The child was admitted to the House of Charity Children's Home on 25th April 2023.
 6. On 5th May 2023, the Nairobi Children's Court committed the child to the House of Charity Children's Home vide Protection & Care Cause No. MCP & CCO/E278 of 2023 for 3 months. The said period was later extended.
 7. Efforts to trace the child's parents have not been successful despite extensive search.
 8. The Joint Applicants filed a Chamber Summons application of 22nd August 2024, vide which they sought to have Ms PMK of Majaoni, Shanzu appointed as a guardian ad litem in respect of these proceedings. The said Chamber Summons was heard on 23rd October 2024. This Court, being satisfied that the proposed guardian ad litem was fit to be appointed as such, appointed her and directed her to file the requisite report within 30 days.
 9. Concomitantly, the Court directed the Director of Children Services, Kilifi, to conduct a social enquiry and to prepare and file the relevant report within 30 days of the said date.
 10. The main matter was heard on 27th November and 16th December 2024. A total of 5 witnesses testified. I shall set out a summary of their evidence below.



11. The first Witness was Winifred Wambua Kaluka. Winifred is a social worker working with the Directorate of Children Services, Kilifi. She testified that upon receipt of the Court orders, they visited the home of the Joint Applicants on 26th November 2024. They found both the applicants and the child. The child appeared to be in good health and was happy. In her assessment, the Joint Applicants and the child have a good bond. She testified that the Joint Applicants met all the legal requirements, had the financial ability, and that it would be in the child's best interest for the adoption application to be allowed. She, therefore, recommended the adoption.
12. Joshua Mwalimu Wambua, a social worker with Little Angels Network was the second Witness. He testified that his organization assessed both applicants and the child. They approved the applicants and issued the certificate declaring the child as being free for adoption. The latter certificate bears serial number 002XXXX and is dated 6th December 2024. He testified that Little Angels Network recommended the adoption.
13. The 1st Applicant SNM was the 3rd Witness. The 2nd Applicant is his wife. S is an agricultural consultant. He stated that they were desirous of adopting Baby FG. He testified that they do not have a biological child of their own but that they adopted Baby M. He further testified that he knew that adoption is permanent and that if the application is allowed, Baby FG will have the right to inherit from him.
14. The fourth Witness was PMC. She is the 2nd applicant. Ms C testified that she is a clinical officer. She further testified that they had been married for 17 years. she, too, is aware of the effect of adoption if the adoption. She proposed that the child would be brought up as a Christian if the adoption application is allowed.
15. The last Witness was the guardian ad litem, PMK. It was her testimony that she visited the Joint Applicants and assessed their suitability to adopt the child. She testified that the Applicants had bonded well with the child. She supported the application and recommended the adoption.
16. 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.
17. I have already set out the circumstances under which the child was found. She was abandoned near the [Particulars Withheld] Bridge near [Particulars Withheld] School Kawangware, Nairobi, approximately two days after birth on 25th April 2023. 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.”
18. Regarding the baby’s nationality, the evidence adduced shows that she was found abandoned within 2 days of 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.



19. 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 have no doubt the child is fit for adoption.
20. Concerning the Joint Applicants' suitability, they are respectively Kenyan citizens, aged 47 and 50 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.
21. Consequently, I do not doubt that they meets 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.”
22. 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.
23. 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.”
24. 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.”
25. In my view, the application has merit. Consequently, I issue the following orders:-
1. I declare the child, Abandoned Unknown Baby Girl alias FG alias FG, 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, SNM and PMC are hereby authorised to adopt Abandoned Unknown Baby Girl alias FG alias, FG;



4. Abandoned Unknown Baby Girl alias FG alias FG, shall henceforth be known as HMS;
 5. I appoint VOO and LDC as the Legal Guardian of HMS 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 HMS as being 23rd April 2023 in the Adopted Children Register as provided for by section 201 of the *Children Act*, 2022.
 7. The guardian ad litem, PMK, is hereby discharged.
26. I make no orders regarding costs as this is a non-contentious adoption cause.
27. 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;

Arthur – Court Assistant.

