



**GKW & another v Little Angels Network (Adoption Cause E001 of 2025) [2025] KEHC 5132 (KLR) (23 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5132 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E001 OF 2025**

**G MUTAI, J**

**APRIL 23, 2025**

**IN THE MATTER OF THE CHILDREN ACT, 2022**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF ABANDONED DENTAL (TLSH) ALIAS ABANDONED BABY ALIAS JB (THE CHILD) BY MR GKW AND GWM (THE JOINT APPLICANTS)**

**BETWEEN**

**GKW ..... 1<sup>ST</sup> APPLICANT**

**GWM ..... 2<sup>ND</sup> APPLICANT**

**AND**

**LITTLE ANGELS NETWORK ..... RESPONDENT**

**JUDGMENT**

1. The Joint Applicants are Kenyan adults of sound mind. They were born respectively, on 13<sup>th</sup> February 1981 and 13<sup>th</sup> July 1980. They married each other on 22<sup>nd</sup> October 2011 at ACK Memorial Cathedral, Mombasa. The couple who profess the Christian religion reside at [Particulars Withheld] in Nyali, Mombasa, within the Republic of Kenya. They do not have biological children of their own.
2. In their pleadings, the Joint Applicants describe themselves as being financially stable, having no criminal record, and being physically and emotionally fit, in their own words, to take care of the child.
3. They have had custody of the child since 9<sup>th</sup> August 2024. They received the child into their joint care and custody on the said date upon signing a foster care agreement with New Life Home Trust, a children’s home in whose custody the child had been hitherto.



4. The adoption society called Little Angels Network had the Joint Applicants investigated. Thereafter, they prepared a pre-placement report dated 6<sup>th</sup> December 2023. In the said report, the agency stated that the Joint Applicants were suitable adoptive parents.
5. The child, the subject of the proceedings, is estimated to have been born on 20<sup>th</sup> November 2022. He was abandoned near the dental clinic at Thika Level 5 Hospital on 9<sup>th</sup> December 2022 at around 2353 by a Mr. Peter Maina, who rescued him and took the boy to the Thika Level 5 Hospital. Due to complications with admission Mr Maina first reported the matter to Thika Police Station vide OB NO 02/10/12/2022 and thereafter had him admitted at the New Born Unit of the said hospital until 20<sup>th</sup> December 2022 when the Senior Resident Magistrate at Thika Law Courts committed him to New Life Home Trust vide Care and Protection Number MCP & CCO/E527 of 2022.
6. No one has come to claim the child despite the passage of time. The security guard who rescued the child stated that from the time he found the child up to the date he was interviewed, no one had come forward to claim him.
7. The report freeing the child for adoption observed that the Police Department had confirmed that they had exhausted their investigations and were not successful in tracing the parents.
8. Being desirous a adopting the child, the Joint Applicants filed the Originating Summons dated 13<sup>th</sup> January 2025, vide which they sought 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 Abandoned Dental (TLSH) alias Abandoned Baby alias JB (the child) a Kenyan citizen by birth;
  2. Pursuant to the provisions of section 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, GKW and GWM, be authorized to adopt Abandoned Dental (TLSH) alias Abandoned Baby alias JB (the child);
  4. Upon the making of the adoption order, the child is to be known as JWK;
  5. Upon the making of the adoption order, FMM and JNM be appointed Legal Guardians of the child as provided for by the provisions of Section 196 of the *Children Act*, 2022;
  6. Upon the making of the adoption order, the Registrar General do make an entry in the Adopted Children Register recording the adoption and the estimated date of birth of the child as being 20<sup>th</sup> November 2022, as provided for by Section 201 of the *Children Act*, 2022; and
  7. The costs of this application be costs in the cause.
9. The said Originating Summons was supported by, inter alia, the statement in support of the application sworn by the Joint Applicants, a copy of the Foster Care Agreement, a report to declare the child free for adoption dated 3<sup>rd</sup> July 2024, a Preplacement Report, as well as other supporting documents.
10. The Joint Applicants also filed a Chamber Summons application dated 13<sup>th</sup> January 2025, vide which they sought to have Ms GNK appointed as a guardian-ad-litem in respect of these proceedings.
11. Upon hearing the chamber summons application dated 13<sup>th</sup> January 2025 in open Court and being convinced of its merits, I allowed it. I ordered Gladys Njoki Kariuki and the Directorate of Children



Services to conduct a home visit and to prepare and file the requisite reports. Pursuant to these directions, the guardian-ad-litem and the Directorate prepared and filed the requisite reports. I have perused and considered them in my judgment.

12. The Originating Summons was heard on 26<sup>th</sup> March 2025. A total of five witnesses testified. I will briefly set out their evidence below.
13. The first witness was Mr Joshua Mwalimu Wambua. He is a social worker with Little Angels Network. He testified that his organization freed the child for adoption and assessed the suitability of the Joint Applicants. He testified that the Joint Applicants were suitable adoptive parents; consequently, he recommended the adoption.
14. Ms Karen Njeri Mwangi of the Directorate of Child Services, Mombasa. She testified that they were served with a Court order, whereupon they conducted a home visit on 14<sup>th</sup> March 2025. Subsequently, they prepared a report dated 19<sup>th</sup> March 2025. She stated that the Joint Applicants had bonded well with the child. She, too, recommended the adoption.
15. The third Witness was Ms GWM. She is presently on sabbatical and is not working. She and her husband have no children of their own. They wish to provide a home to a needy child, hence the decision to adopt. She testified that she was aware that adoption is permanent and that the child would have a right to inherit from them. She further testified that they were committed to bringing him up well. If the adoption is successful, they propose to rename the child as JWK. Ms M further stated that the proposed adoption has the support of their family.
16. Mr GKW, the 1<sup>st</sup> applicant, was the fourth Witness. Mr W is a businessman. He and G have been married to each other for 14 years. He testified that they wish to give a home to a needy child. He too was aware of the effect of the adoption, its permanence and the right of the adopted child to inherit from them. He was categorical that their family supported their intention to adopt the child.
17. The last Witness was the guardian-ad-litem. Ms Gladys Njoki Kariuki testified that she visited the home of the Joint Applicants in [Particulars Withheld]. According to her, the home environment is conducive to the upbringing of a child. The child, according to her, has a spacious place. She recommended the adoption.
18. I have considered the application, supporting documents, and the various witnesses' evidence. The issues that emerge for determination are whether the child is available for adoption, if the Joint Applicants are fit to adopt the baby, and, most importantly, whether the adoption is in the best interests of the child.
19. I have already set out the circumstances under which the child was found. He was abandoned near the dental clinic at Thika Level 5 Hospital on 9<sup>th</sup> December 2022 at around 2353 by a Mr. Peter Maina, who rescued him and took the boy to the Thika Level 5 Hospital. At the time he was abandoned, the child was a few weeks old. Attempts to trace his parents have been unsuccessful. Nobody has come forward to claim the child despite efforts made. 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 that:-

“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.”



20. Regarding the baby's nationality, the evidence adduced shows that he was found abandoned within a few weeks of his 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.
21. 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.
22. Concerning the Joint applicants' suitability, they are Kenyan citizens, both aged 44, 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.
23. 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.”
24. 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.
25. 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.”
26. The child herein was found abandoned. He, therefore, needs necessities like food, shelter, education and clothing. He 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.”
27. In my view, the adoption application has merit. I therefore issue the following orders: -



1. I declare the child, Abandoned Dental (TLSH) alias Abandoned Baby alias JB, a Kenyan citizen by birth;
  2. I dispense with the consent of the biological parents to this adoption since Abandoned Dental (TLSH) alias Abandoned Baby alias JB was abandoned a few days after birth by his biological mother, and the whereabouts of his father is unknown;
  3. The Joint Applicants, GKW and GWM, are hereby authorized to adopt Abandoned Dental (TLSH) alias Abandoned Baby alias JB;
  4. Baby Abandoned Dental (TLSH) alias Abandoned Baby alias JB shall henceforth be known as JWK;
  5. I appoint FMM and JNM as the Legal Guardians of JWK and entrust them with the responsibility of taking care of the child if the Joint Applicants become deceased or are otherwise permanently unable to take care of him before he attains the age of majority;
  6. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of JWK as being 20<sup>th</sup> November 2022 in the Adopted Children Register as provided for by section 201 of the *Children Act, 2022*; and
  7. The guardian-ad-litem, Gladys Njoki Kariuki, is hereby discharged.
28. I make no orders regarding costs as this is a non-contentious adoption matter.
29. Orders accordingly

**DATED AND SIGNED AT MOMBASA THIS 23<sup>RD</sup> DAY OF APRIL 2025. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Ms Mercy Ngugi, for the Joint Applicants; and

Arthur – Court Assistant.

