



**In re Abandoned Child alias Baby B alias Baby B alias Baby B alias BT (Adoption Cause E006 of 2025) [2025] KEHC 10086 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10086 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E006 OF 2025**

**G MUTAI, J**

**JULY 14, 2025**

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

**AND**

**IN THE MATTER OF ABANDONED CHILD ALIAS  
BABY B ALIAS BABY B ALIAS BABY B ALIAS BT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF  
ADOPTION OF ABANDONED CHILD ALIAS BABY B ALIAS  
BABY B ALIAS BT BY AKK & EMA (THE JOINT APPLICANTS)**

**BETWEEN**

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

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

**AND**

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

**JUDGMENT**

1. The joint applicants herein moved this honourable court vide Originating Summons dated 27<sup>th</sup> March 2025, seeking the following orders:-
  - a. Pursuant to Article 14(4) of the *Constitution* of Kenya 2010 and section 7(1) of the *Children Act*, 2022, this honourable court be pleased to declare the child, Abandoned Child alias Baby B alias Baby B alias BT, a Kenyan citizen by birth;



- b. 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 187 of the *Children Act* 2022;
  - c. The joint applicants, AKK and EMA, be authorized to adopt Abandoned Child alias Baby B alias Baby B alias BT;
  - d. Upon the making of the adoption order, the child to be known as DBA;
  - e. Upon making the adoption order, TMJ be appointed legal guardian of the child as provided for by the provisions of section 188 of the *Children Act*, 2022;
  - f. Upon making of the adoption order, the Registrar General do make an entry recording the adoption order and the estimated date of birth of the child as 6<sup>th</sup> January 2023 in the Adopted Children Register as provided for by section 201 of the *Children Act*, 2022; and
  - g. The costs of this application be costs in the cause.
2. The application is supported by the averments in the statement in support, sworn on 27<sup>th</sup> March 2025. Vide the said statement, the applicants jointly aver that they are adult Kenyan citizens born in 1975 and 1980, respectively. They are married to each other and are not blessed with children of their own together; however, A has a child from his previous marriage. The motivation to adopt the baby was ignited by the desire to expand their family and to have children of their own, hence this adoption proceeding. Regarding their occupation, the applicants are an executive chef and a supply and logistics superintendent at Base Titanium, respectively.
  3. The child is estimated to have been born on 6<sup>th</sup> January 2023. He was abandoned at Murangá County and Referral Hospital by his biological mother, BWK. Rebecca M Mbogoni, a nurse at the hospital, noticed that at around 1630hrs of 6th January 2023, the child's mother absconded from the hospital, leaving the child in the hospital's new-born unit. She reported the matter at Murangá Police Station, where the case was recorded and booked vide OB No. xx/06/1/2023.
  4. The child was committed to the legal custody of New Life Home Trust by the Murangá Chief Magistrate's Court vide Care and Protection Number E003 of 2023.
  5. The child was declared as being free for adoption by the Case Committee of the Buckner Kenya Adoption Services in its meeting held on 3<sup>rd</sup> July 2024. Consequently, the requisite Certificate, Serial No.xxxxxx was issued by the said agency.
  6. Upon the institution of these proceedings, JMJ was on 29<sup>th</sup> April 2025 appointed the guardian-ad-litem. The Directorate of Children Services, Mombasa, and the guardian-ad-litem were directed to file their respective social inquiry reports within 30 days.
  7. Preceding the hearing, the County coordinator of children's services, Mombasa County, filed the report dated 30<sup>th</sup> June 2025, vide which they recommended the adoption. In a similar vein, the guardian-ad-litem filed her report recommending the adoption.
  8. During the hearing, the applicants urged the court to allow the application to enable them to adopt the baby. They stated that they understood the consequences of adoption and were aware that adoption is permanent. The joint applicants prayed for the adoption orders to issue.
  9. Mr Joshua Mwalimu Wambua of the Little Angels Network testified that they freed the child for adoption and also assessed the prospective adoptive parents. He stated that the certificate freeing the child for adoption had serial number xxxxxx. Mr Wambua recommended the adoption.



10. Ms Njeri Mwangi of the Children Department, Mombasa County, testified that her department conducted the social enquiry on the prospective adoptive parents by visiting their home twice and interviewing them as well as the biological daughter of the 1<sup>st</sup> applicant. She testified that the adoption has the support of the family members. Ms Mwangi recommended the adoption.
11. The biological daughter of the first applicant, Ms PRA, who works as a receptionist. Ms PRA testified that she relates well with the child. She expressed her support for the adoption.
12. I have considered the application herein, materials in support and evidence by various witnesses and the issues that emerge for determination are: whether the baby is available for adoption, whether the applicants are fit to adopt the baby and most importantly, whether the adoption is in the best interest of the child.
13. I have already set out the circumstances under which the child was abandoned. I need not rehash the same here, save to state that since her disappearance, the child's mother hasn't been traced.
14. The child was placed with the joint applicants on 16<sup>th</sup> August 2024. The joint applicants have played the role of a father and mother to him ever since. Nobody has come forward to claim the child, and therefore, the need for consent pursuant to sections 186 and 187 is dispensed with. I am guided by the case of *re Baby J* [2023] KEHC 1788 (KLR), where the court stated:-

“As indicated by the report of the Child Welfare Society of Kenya, Baby J was abandoned by his biological parents. Attempts to trace them have failed to bear fruits. Consequently, he was declared free for adoption and placed with the Joint Applicants. As an abandoned child, there was no one to give the consent required under section 186(8) of the *Children Act*, 2022. That being the case, I dispensed with the consent required under the aforesaid section of the Act in exercise of my power under section 187(1) of the *Children Act*, 2022.”
15. Regarding the baby's nationality, it is clear that she was found abandoned at Murangá County and Referral Hospital within the Republic of Kenya. Article 14(4) of the *Constitution* of Kenya, 2010 recognises that a child who is less than 8 years of age, and whose nationality and parents are not known, is presumed to be a Kenyan citizen by birth. In view of this provision, the child herein is presumed to be a Kenyan citizen by birth.
16. In terms of age, the child is above 6 weeks and below 18 years, which provision falls within the age bracket of any adoptive baby pursuant to Section 184(1)(b) of the *Children Act*, 2022. Further, Section 185 of the *Children Act* recognises that any child who is resident in Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt the child is fit for adoption.
17. Concerning the applicants' suitability, they are Kenyan citizens aged 50 and 45 years respectively, which places them under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with Section 186 of the Children's Act. The applicants have been described as financially stable, as both are executive chef and supply and logistics superintendent with an average income of Kes.420,000/- and Kes.435,000/-, respectively. They also have joint properties as follows: a 2-bedroom maisonette and a 3-bedroom bungalow in Bamburi and Kashani, respectively; 12 acres of land on Migumomiri, Kaloleni, where they practice cattle rearing for sustenance; a 4-bedroom house in Kaloleni; 2 motor vehicles - Toyota Harrier. They have been described as caring, loving and Christians with no criminal record. Since the placement of the minor into their custody, the child has fully bonded. They also understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and admit they will treat the baby like their biological child. Consequently, I have no doubt that they have met the necessary requirements to adopt the baby.



18. 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 and Section 8(1) and (2) of The Children's Act 2022 which provide that the best interests of a child is the primary consideration that the court considers when making any decision concerning a baby.
19. The child herein was found abandoned at Murangá County and Referral Hospital. She needs basic necessities like food, shelter, education and clothing. She has fully integrated with the applicants. It is obviously in the best interests of the child that this adoption application be allowed. I am guided by the case re AA (Child) [2021] KEHC 9294 (KLR) where the court stated:-
- “ Article 53 (2) of the Constitution emphasises that the best interest of the child is paramount. The child will have a family and a home if the orders are granted. The applicants are willing and ready to give parental guidance and a loving home and family to the child.”
20. In my view, the application has merit. Consequently, I allow the Originating Summons and issue the following orders:-
- a. Abandoned Child alias Baby B alias Baby B alias BT is hereby declared a Kenyan citizen by birth;
  - b. The consent of the biological parents or guardians of Abandoned Child alias Baby B alias Baby B alias BT is dispensed with;
  - c. The joint applicants are authorized to adopt Abandoned Child alias Baby B alias Baby B alias BT, who shall henceforth be known as DBA;
  - d. TMJ is hereby appointed the legal guardian of the minor and entrusted with the responsibility of taking care of DBA in the event that the joint applicants die or are otherwise permanently unable to take care of him before he attains the age of majority;
  - e. The Registrar General is hereby ordered to make an entry recording the adoption order herein and the date of birth of DBA as being 6<sup>th</sup> January 2023, in the Adopted Children Register as provided for by Section 201 of the Children Act, 2022; and
  - f. The guardian-ad-litem, JMJ, is hereby discharged;
21. I make no orders regarding costs as this is a non-contentious adoption matter.
22. Orders accordingly.

**DATED AND SIGNED IN MOMBASA THIS 14<sup>TH</sup> DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Ms Ngugi, for the Joint Applicants; and

Ms Kalekye – Court Assistant.

