



REPUBLIC OF KENYA



KENYA LAW
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In re Baby M aka Abandoned Baby Child (A Child) (Adoption Cause E005 of 2025) [2025] KEHC 10160 (KLR) (14 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E005 OF 2025**

G MUTAI, J

JULY 14, 2025

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF
ADOPTION OF ABANDONED BABY M AKA ABANDONED BABY
CHILD-A CHLD BY SBK AND EMB (THE JOINT APPLICANTS)**

BETWEEN

SBK 1ST APPLICANT

EMB 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The joint applicants herein moved this honourable court vide Originating Summons dated 6th March 2025, seeking orders that:-
 - a. Pursuant to Article 14(4) of *the Constitution* of Kenya 2010 and Section 7 of the *Children Act*, 2022, this honourable court be pleased to declare the child Baby M aka Abandoned Baby Child 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 186 of the *Children Act*, 2022;
 - c. The applicants, SBK and EMB, be authorized to adopt the child, Baby M aka Abandoned Baby Child;
 - d. Upon the making of the adoption order, the child be known as LAS;



- e. Upon the making of the adoption order, DKM be appointed legal guardian of the child as provided for by the provisions of Section 195 of the *Children Act*, 2022;
 - f. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of birth of the child as 26th August 2019, 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 thereof, sworn on 6th March 2025. The applicants are adult Kenyan citizens born in 1965 and 1968, respectively. They are married to each other and are not blessed with children of their own; however, E has twins from a previous marriage, and Shida has played an important role in raising them. They are adoptive parents to a child, namely CS. The motivation to adopt the baby has been ignited by the desire to expand their family, providing a home to children who have no one to take care of them and to give their adopted daughter, Comfort Saroh, company as the girls are all grown. Regarding their occupation, the applicants are a mason and an administrative secretary, respectively.
 3. The child is estimated to have been born on 26th August 2019. He was abandoned about a month after birth by his mother and was rescued by one MW, a resident of Ndenderu in Kiambu county. According to Ms W, she and the mother of the child were drinking together at Githogo Trading Centre when she requested to go and relieve herself, but she never returned. The child was rescued and the matter reported at Rweno Police Station, and the same was booked on Occurrence Book Number XXXX/2019. The child was committed to the care of the Nest Children's Home by the Resident Magistrate, Children's Court, Kiambu vide Care and Protection Cause Number XXXX of 2019. The child remained at the said institution until the time he was released to the joint applicants upon the signing of the Infant/Child Release Agreement on 5th May 2021.
 4. In its meeting held on 5th February 2021, the case committee of Buckner Kenya Adoption Services declared the child free adoption and issued a Certificate Serial Number No. XXXX to that effect.
 5. After the filing of these proceedings, BML was on 27th March 2025 appointed as the guardian ad litem. Concomitant with the said appointment, this Court ordered the Director of Children Services, through the Children Department, Kilifi County, and the said guardian ad litem, to file their respective social inquiry reports within 30 days.
 6. Preceding the hearing, the County coordinator of children's services, Kilifi County, filed her report dated 2nd July 2025, recommending the adoption. The guardian ad litem filed her report on 5th May 2025, recommending the adoption.
 7. 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 knew that the adoption order, once granted, is permanent. This is not the first time the joint applicants have adopted a baby.
 8. There were other witnesses. JMW from the Little Angels Network testified that they approved the applicants as being suitable adoptive parents. His organisation also prepared a report dated 24th July 2019. He recommended the adoption.
 9. The guardian ad litem, Ms BML, testified that she carried out two home visits to assess the adoptive parents and wrote a report dated 5th May 2025, vide which she recommended the adoption. In her view, the joint applicants have sufficient resources to adopt the child.



10. A representative from Buckner Kenya Adoption Society, Mr AM, testified that they facilitated the adoption and declared the child as being free for adoption, vide a certificate serial number XXX.
11. Mr DKM, the proposed legal guardian, testified that he is ready to step in the event the joint applicants were unable to take care of the child. He testified that he had discussed the matter with his wife and that they were in agreement. Mr M understands what the role of the legal guardian is and has willingly agreed to be appointed as such.
12. The last witness was Winifred KK. Ms K is the Children's Coordinator, Kilifi County. Ms K testified that they carried out a social enquiry. She recommended the adoption.
13. 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 interests of the child.
14. I have already set out the circumstances under which the baby was rescued. Baby Michael was abandoned by his birth mother around one month after his birth. The whereabouts of the birth mother is presently unknown. Given the period that has passed, it is highly unlikely that the parents of the child will ever be found.
15. The child was placed with the joint applicants on 5th May 2021. They have played the role of a father and a mother to him. He has been under their care since he was one year, eight months and five days old. Nobody has come forward to claim him. Under the circumstances, the need for consent pursuant to sections 186 and 187 of the *Children Act* is dispensed with. I am guided by the case of re Baby JG (A Child) [2023] KEHC 22702 (KLR), where the court stated:-

“It is noted that this is was a case of abandonment therefore the consent of the biological parents shall be dispensed with whereas the consent of the proposed Legal Guardians has been duly filed.”
16. Regarding the baby's nationality, it is clear that he was found abandoned at Githogoro Trading Centre, Kiambu County, within the Republic of Kenya. *The Constitution*, in Article 14(4), 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.
17. 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* does recognize that any child who is resident in Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt that the child is fit for adoption.
18. Concerning the applicants' suitability, they are Kenyan citizens aged 60 and 57 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 Act*. The applicants have been described as financially stable. They also have rental houses. They have been described as caring and loving Christians with no criminal record. Since the placement of the minor into their custody, the child has fully bonded with them. They also understand the consequences of adoption and know that it is permanent. They appreciate the role of a parent and admit they will treat the baby like their biological child. The couple recently adopted a baby girl called Comfort. Baby M will therefore have an elder sister with whom he will grow up.



19. Consequently, I have no doubt that they have met the necessary requirements to adopt the baby. I am guided by the case of the court stated that:-

Re of GW (Baby) [2021] KEHC 1220 (KLR) where

“The Court finds that it is in the best interests of the child to make the adoption order; that the Applicants are suitable, qualified and able adoptive parents who understand the nature of the adoption process and agree to give effect to the child’s ensuing rights; and that the child and the Applicants have bonded well as a family together with the Applicants’ own biological children, and the Applicants’ extended family and friends support the adoption.”

20. 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 both declare the best interests of a child as the guiding principle and the primary consideration whenever a court is making any decision concerning a baby.

21. The child herein was found abandoned at Githogoro, Karuri, Kiambu County. 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 In re IK (Child) [2020] KEHC 1467 (KLR) 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 wellbeing of the child. As *the Constitution* and the law state, in all matters concerning a child, the best interests of the child are paramount.”

22. In my view, the application has merit. Consequently, I allow the Originating Summons and issue the following orders:-

- a. Baby M, aka Abandoned Baby Child, is hereby declared a Kenyan citizen by birth;
- b. The consent of the biological parents or guardians of Baby M, aka Abandoned Baby Child, is dispensed with;
- c. The joint applicants are authorized to adopt Baby M, aka Abandoned Baby Child, who shall henceforth be known as LAS;
- d. DKM is hereby appointed the legal guardian of the minor and entrusted with the responsibility of taking care of LAS in the event 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 LAS as being 26th August 2019, in the Adopted Children Register as provided for by Section 201 of the *Children Act*, 2022; and
- f. The guardian-ad-litem, Beatrice Mwaringa Lugwe, is hereby discharged;

23. I make no orders regarding costs as this is a non-contentious adoption matter.

24. Orders accordingly.

DATED AND SIGNED IN MOMBASA THIS 14TH DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.



GREGORY MUTAI

JUDGE

In the presence of:-

No appearance for the Applicant; and

Ms Kalekye – Court Assistant.

