



**In re TS (Minor) (Adoption Cause E003 of 2023)  
[2024] KEHC 252 (KLR) (23 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 252 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E003 OF 2023  
G MUTAI, J  
JANUARY 23, 2024  
IN THE MATTER OF AN APPLICATION FOR KINSHIP  
ADOPTION UNDER THE CHILDREN ACT, 2022  
AND  
IN THE MATTER OF TS (MINOR)**

**IN THE MATTER OF**

**GOO ..... 1<sup>ST</sup> APPLICANT  
DIG ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

**Introduction**

1. The applicants, GOO (“G”) and DIG (“Dorcas”), are a married couple in a monogamous civil marriage. They got married on 15<sup>th</sup> June 2022 at the Marriage Registrar’s Office in Mombasa. G is a gantry operator employed by the (particulars withheld), while Dis a teacher. They live in particulars withheld) and have three issues. They are 43 and 32 years old, respectively. The proposed adoptive child, TS (“T”), is G’s nephew, the son of his now deceased sister EAO (“E”) and a Mr. CMO . E died on 1<sup>st</sup> December 2020, leaving T under the care of the proposed adoptive parents. G and Dintend to adopt T.

**The Pleadings**

2. With a view to having the adoption formalised, the joint applicants filed an Originating Summons dated 1<sup>st</sup> March 2023 on 2<sup>nd</sup> March 2023 vide which they sought the following orders:-

1. That the applicants GOO and DIG be authorised to adopt TS , the minor herein; and



2. That the Registrar General do make an entry of this adoption in the Adopted Children Register.
3. In the Supporting Affidavit, the joint applicants deposed that they are Kenyan adults of sound mind. They averred that the child's mother died on 1<sup>st</sup> December 2020, leaving T under their care. They also deposed that the child's father, CMO, had not been present in the life of the child and had executed a legal document relinquishing his rights as a parent. They approached Little Angels Network, an adoption society that, upon vetting them, confirmed that they were suitable adoptive parents.
4. The applicants attached to their application national identity cards, marriage certificate, death certificate of the child's mother, birth certificate of the child, consent of the child's father to the adoption as well as certificate of declaring the child free for adoption, the report to declare a child free for adoption and other supporting documents. I have read the same and considered them when writing this judgment.

### **Appointment of a guardian-ad-litem**

5. The joint applicants filed a Chamber Summons application dated 26<sup>th</sup> May 2023, vide which they sought the following orders:-
  1. That JOO of P.O Box 97023 – 80100 Mombasa and a holder of national identification card number xxxxxxx be appointed as a guardian ad litem;
  2. That the Director of Children Services, Ministry of Labour and Social Protection investigates the applicant's fitness to adopt and file a report.
6. On 29<sup>th</sup> June 2023, the then-proposed guardian ad litem, JOO, testified in court. Jim works for a shipping line and has known G for 24 years. Being satisfied that he was suitable, I appointed him as a guardian ad litem and:-
  1. Directed him to prepare and file the appropriate social enquiry report within 30 days;
  2. Directed the Director of Children Services, through the County Children Coordinator Mombasa County, to prepare and file the appropriate social enquiry report within 30 days; and
  3. Slated the cause for hearing on 31<sup>st</sup> July 2023.

### **Evidence Adduced in Court**

7. This matter proceeded on 4<sup>th</sup> December 2023 and 16<sup>th</sup> January 2024. A total of 5 witnesses testified. The 1<sup>st</sup> witness was Joshua Mwalimu Wambua of the Little Angels Network. He testified that his employer declared the child as being free for adoption. They also assessed the applicants and found them suitable adoptive parents. The certificate declaring the child as being free for adoption had serial number xxxx. The adoption society considered the adoption application. The case committee of the said society, in its sitting in January 2023, approved the application. Mr. Wambua recommended the adoption.
8. The second witness was the 1<sup>st</sup> applicant. He testified that he works for Kenya Ports Authority as a Gantry Crane Operator. He stated that since the child's mother died, T had been staying with them. The father of the child, who he testified lives in Samburu, declined to be present in his life. G has three children, all boys, aged 7, 4 and 2. The said children see T as their elder brother and have bonded very well with him. Apart from taking care of T, he would like to have him admitted to his medical cover.



9. The third witness was DIG . Dis G's. She testified that T had been with her family since 2020. She enjoys a mother-child relationship with him. She and her husband are ready, able and willing to adopt him so that they can take care of his needs. She prayed that the adoption application be allowed.
10. Ms Njeri Mwangi of the Children's Department was the fourth witness. She testified that she conducted a home visit on 15<sup>th</sup> August 2023. Thereafter, she wrote a report dated 5th September 2023, which was filed on 14th November 2023. She stated that the proposed adoptive parents had, in her opinion, bonded well with the child. She confirmed that the adoptive parents have the means to take care of the child and that the extended family supports the application.
11. The guardian ad litem was the fifth witness. He works for Rais Shipping Services (K) Ltd. He testified that T, whom he referred to as "CJ" during his testimony, lived in a good home and had bonded well with his step-siblings. He, too, recommended the adoption application.
12. I have seen the pleadings, the supporting documents, the reports by the Children's Department, and the guardian ad litem. I have also heard the testimonies of the witnesses who testified in Court. The issues that call for my determination are the following: whether the minor is available for adoption, if the applicants are fit to adopt him, and, most importantly, whether the adoption is in the best of the child.

### **Analysis and Determination**

13. This is a kinship adoption. The joint applicants are the uncle and aunt, respectively, of the child. The child's mother is deceased, while his father has consented to the adoption.
14. Regarding the child's nationality, it is clear that he is of Kenyan nationality.
15. In terms of age, the minor is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive child pursuant to Section 184 (b) of the *Children Act*, 2022. Further, Section 185(1) 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.
16. Concerning the joint applicants' suitability, they are Kenyan citizens aged 45 and 34 years, respectively, which places them under 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. The applicants have been described as financially stable. They have 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 once an adoption order is made, it is permanent.
17. Consequently, I have no doubt that they have met the necessary 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.”
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* 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.



19. 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.”

20. As stated earlier T’ mother died. His father is distant and unable and unwilling to take care of him. In the circumstances, he needs basic necessities like food, shelter, education and clothing which the joint applicants have stepped in to provide. From the evidence adduced he has fully integrated with them. Their children see T as their sibling. 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.”

### **Disposition**

21. Based on the foregoing, I find and hold that the adoption application has merits. Consequently, I issue the following orders:-

1. The joint applicants, GOO and DIG , are hereby authorised to adopt TS (Minor);
2. The Registrar General is hereby ordered to make an entry recording the adoption order made herein; and
3. The guardian-ad-litem, JOO , is hereby discharged.

Orders accordingly.

**DATED, DELIVERED AND SIGNED AT MOMBASA THIS 23<sup>RD</sup> DAY OF JANUARY 2024 VIA MICROSOFT TEAMS.**

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**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Ms. Ngui for the joint applicants; and

Arthur – Court Assistant.

