



**In re Baby AT (Child) (Adoption Cause E005 of 2023)  
[2024] KEHC 720 (KLR) (19 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 720 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ADOPTION CAUSE E005 OF 2023  
MW MUIGAI, J  
JANUARY 19, 2024  
IN THE MATTER OF CHILDREN ACT 2022  
AND  
IN THE MATTER OF BABY AT (CHILD)**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. The Applicants, AMW – ID Number XXXXXXXX and BKS - ID Number XXXXXXXX (“the Applicants”) sought by their application to be allowed by this Court to adopt Baby AT (hereafter “the child”).
2. Vide Originating Summons application dated 15<sup>th</sup> March, 2023 the Applicants sought among other orders; that the Applicants herein AMW and BKS be authorized to adopt baby AT an infant who is to be known as AWM; that CMM be appointed as the Guardian *Ad Litem* in this case; that FWW & DMM be appointed as the Legal Guardians of the child; that this Court directs the Director of Children’s Services to investigate the case and file a report and the Registrar General makes and entry recording this adoption in Adopted Children’s Register. CMM of ID No XXXXXXXX was appointed by this Court as the Guardian *Ad Litem* on 13/07/2023.
3. The child (AT) who is the subject of the present adoption proceedings was presumably born on 2<sup>nd</sup> October, 2021 at Otiende in Kibra Constituency. The child was found abandoned in a hotel at Otiende shopping Centre by unknown person and was rescued by a Good Samaritan by the name MK of Tel [Particulars Withheld] and ID Number XXXXXXXX who reported the matter at Langata Police Station. The matter was booked via OB 12/9/10/2021. The Police sought a vacancy at Thomas Barnardo House where the minor was admitted at the said home as a child in need of care and



protection on 9<sup>th</sup> October, 2021. Later the child was committed at Thomas Barnardo House as a child in need of protection and care on 10<sup>th</sup> June 2022 vide the Nairobi Children's Court Care and Protection Case Number E226 of 2022 for a period of 3 years.

4. The Langata Police Station in their final police letter dated 19<sup>th</sup> May, 2022 confirmed that no one came forward to claim the child and their efforts to trace the kindred of the child have been futile.
5. The Kenya Children's Home Adoption Society contacted MK, the Good Samaritan on 12/10/2022 in order to give the current status of the matter. She reported that after she rescued the child nobody has ever contacted her pertaining the matter.
6. The minor was freed by the Kenya Children's Home Adoption Society's Case Committee on its sitting of 19<sup>th</sup> October, 2022 vide Certificate Declaring Child Free for Adoption Serial No XXX.
7. The Kenya Children's Homes Adoption society relied on the following documents in respect of baby AT.
  1. Photo
  2. Good Samaritan statement
  3. Initial Police Letter from Langata Police Station
  4. Admission Form to Thomas Barnardo House
  5. Clinic card
  6. Committal summary
  7. Committal Order
  8. Final Police letter
  9. KCH Tracing Report
8. The Applicants herein AMW and BKS are residents of Kitengela within Kajjado County. They are husband and wife - married on 9<sup>th</sup> July, 2014 at Registrar's Office. The Applicants annexed the following documents in support of their application; Applicants copies of Identification cards Medical Reports for both Applicants Agreement between Thomas Barnardo House and the Applicants Police clearance Certificates for both Applicants Legal Guardians letter of Consent Copies of identification Card for the Legal Guardians Affidavit of Fitness of Guardian *Ad Litem*
9. Pursuant to Section 186 of the [Children Act](#) 2022, Kenya Children's Home Adoption Society, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicants.
10. The Guardian *Ad Litem*, CMM also filed the statutory Report in which he noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
11. The Kenya Children's Home Adoption Society filed their report dated 28<sup>th</sup> July, 2023 in Court on 15/08/2023. Mr. Ndotono the Adoption Programme Officer appeared in Court on 28<sup>th</sup> September, 2023 in respect of these Adoption Proceedings. He told the Court that the Case Committee of Kenya Children's Home Adoption Society sitting on 19/10/2022 declared the minor herein free for Adoption vide Certificate declaring child free for Adoption No 872. Applicants herein were placed with the minor from TB on 17/11/2022. The minor has continued to flourish well with the Applicants. The minor was found abandoned at [Particulars Withheld] by a Good Samaritan.



Investigations were carried out but no one came forward to claim the minor. The minor has been with the Applicants and they are aware of their responsibility as Adoptive parents.

12. According to the Report the Applicants made a joint adoption application to Kenya Children's Home Adoption Society on 5/07/2022. The Applicants applied to be placed with a male child with a view to eventually adopt. An Interview session was conducted on 30/08/2022 and a home assessment carried out on 6/09/2022 at their Kitengela residence. The Applicants were found eligible and were placed with the minor on 17/11/2022. The Applicants have been consistently updating the Adoption Society on the child's progress through visits to the Adoption Society on 20<sup>th</sup> December, 2022 and 20<sup>th</sup> January, 2023. The declaration interview was conducted during their third visit on 24<sup>th</sup> February, 2023. The Applicants are a couple having been married on 9<sup>th</sup> July, 2014 at the Registrar's office. The Applicants have not been blessed with any biological child. Their motivation is their need to become parents as they wait for their own biological child. The Applicants lives in their own 3 bedroomed house in Kitengela. The home is in a secure environment and has water and electricity. The 1<sup>st</sup> Applicant is a businessman who owns numerous rental houses and he uses Mpesa mostly for his transaction. The 2<sup>nd</sup> Applicant is a house wife. Their Net Income is Kshs 118,800/-. The Applicants are confirmed to be of good general health (medical reports are attached), they do not have Criminal Record (police clearance reports attached). The Applicants are Christians fellowshipping at [Particulars Withheld]. The Applicants extended family are supportive of the Adoption whereby FWW (the 1<sup>st</sup> Applicant sister) and her husband DMM have accepted to be the Legal Guardians of the minor. They confirmed that they understand their roles as Legal Guardians and have submitted the requisite documents. The Applicants are stable financially hence capable of taking good care of the minor adequately. Since the placement with the minor on 17/11/2022 to date the minor has indeed bonded with them and is attached to both parents and happy around them. The Adoption Agency recommended the Adoption.
13. The Director of Children's Services filed the report dated 27/09/2023 in respect of the proposed adoption of the child by the Applicants. Emily Kimanzi the Machakos Sub County Children Officer appeared in Court on 28/09/2023 in respect of the proposed adoption of the child by the Applicants. She told the Court that she visited the Applicants home in Kitengela and observed that the home environment is child friendly and are financially stable. The Applicants are in business and have rentals in Utawala.
14. Similarly the Report indicated that the Applicants are a married couple vide marriage certificate Number XXXXXXXX. They do not have a child of their own due to a medical condition. Their motivation to adopt is to help a needy child and give them a family. Their families are in support of the Adoption. The Applicants live in their own 3 bedroomed house constructed in their own ¼ Acre piece of land in Kitengela. They also have an apartment in Utawala where they rent out to tenants and also own 2 acre piece of land at Konza, 1 acre piece at Kajiado, ¼ at Juja, ¼ at Thika and a family land at Gatanga. The Applicants are planning to give the minor a good life and ensure that all his needs are fully met. They also want to add him to their medical cover and make him their heir. They recommended the adoption.
15. The Guardian *Ad Litem*, CMM filed his Report dated 15<sup>th</sup> August, 2023 in support of these Adoption proceedings. He stated that he has known the Applicants for over 15 years as they are his family friends. He had made regular visits to their residence in [Particulars Withheld] and have established that it is a conducive and safe environment to raise a child. The Applicants are fully aware of their obligations, that their son has a right to full custody of everything that belongs to them and that the adoption procedure is irrevocable. The Guardian *Ad Litem* recommended the adoption.



16. The Legal Guardians FWW & DMM of Identification Card Numbers XXXXXXXX and XXXXXXXX respectively are a married couple (sister and brother in law to the Applicants) they filed their consents sworn on 15<sup>th</sup> March, 2023.
17. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
18. The home visits by the Guardian *Ad Litem*, the Adoption Society Representative and the Director of the Children's Services established that the Applicants are financially and socially stable and have emotional capability to provide for the upkeep and education of the child and give parental care. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well. The child considers the Applicants to be his parents.

### **Disposition**

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicant's application.
2. The Applicants, AMW and BKS are hereby allowed to adopt Baby AT.
3. Henceforth, the child shall be known as AWM.
4. The child's date of birth is 2<sup>nd</sup> October, 2021 and the place of birth shall be [Particulars Withheld].
5. The child is a Kenyan Citizen by birth and entitled to all rights of a Kenyan citizen.
6. FWW & DMM shall be the Legal Guardians of the child should such eventuality arise.
7. This Court directs the Registrar General to duly enter this order in the Adoption Register.
8. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security of the child within one year of the Adoption in the best interests of the child under Section 8 of Children's Act 2022.
9. The Guardian *Ad Litem* is hereby discharged.

It is so ordered.

**JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 19<sup>TH</sup> DAY OF JANUARY, 2024 (PHYSICAL/VIRTUAL CONFERENCE).**

**M. W. MUIGAI**

**JUDGE**

