



REPUBLIC OF KENYA



**In re MB alias BP (Baby) (Adoption Cause E002 of 2023)  
[2024] KEHC 1408 (KLR) (14 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1408 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
ADOPTION CAUSE E002 OF 2023  
M THANDE, J  
FEBRUARY 14, 2024  
IN THE MATTER OF THE CHILDREN'S ACT (NO. 8 OF 2001)  
AND  
IN THE MATTER OF BABY MB ALIAS BP  
AND  
AN APPLICATION FOR ORDERS OF ADOPTION OF BABY MB ALIAS BP  
BY  
JNNK AND HIS WIFE CWK**

**JUDGMENT**

1. By the Originating Summons dated 20.1.22 and amended on 24.5.23, JNNK and his wife CWK seek to adopt a child known as MB alias BP . Towards this end, the Applicants were assessed by Little Angels Network, a registered adoption society and taken through the adoption process and its implications. The society's case committee sitting on 7.7.22 found the Applicants fit to adopt a child of their preferred age and sex. The child was placed with the applicants for mandatory bonding period prior to adoption on 21.10.22. There is a duly signed foster care agreement on record to that effect.
2. The reports on record indicate that the child is estimated to have been born on 6.1.22. It is reported that on 10.7.17, one Elizabeth Peter found the child abandoned behind Sunbeam Hospital near Sodom in Kangemi, Nairobi on 2.3.22 at around 2200 hours. The matter was reported at Kangemi Police Station vide Occurrence Book Number 35/02/03/2022. Thereafter the child was handed over to Jane Macharia, a Community Health Volunteer who stayed with the child before admission at House of Charity Children's Home on 7.3.22. The child was subsequently formally committed to the same Home for a period of 3 years by Children's Court at Nairobi vide Protection and Care Case Number E135 of 2022. The child was on 7.10.22 declared free for adoption by Little Angels Network vide certificate serial no. 002xxx.



3. In a final letter dated 5.9.22, Kangemi Police Station indicated that since the child was reported abandoned on 2.3.22, efforts to trace the mother had been fruitless.
4. Reports in respect of the assessment of the Applicants have been filed as required. The report of Little Angels Network which arranged the adoption of the child is on record, having been filed on 19.9.23. A report dated 12.2.24 by Winifred Kambua Kaluku, the Kilifi County Coordinator, Children's Services was filed on even date. Sandy Nyanchera Ogechi was on 14.12.23, appointed as guardian ad litem for the child on pending the hearing and determination of the adoption application, in accordance with Section 188 of the *Children Act*. She filed her report dated 29.12.23 on 12.1.24. All these reports are positive and recommend that adoption.
5. It is noted that the child has been in continuous care and control of the Applicants for a period of over 1 year and 4 months which is more than the statutory 3 months' period required under Section 185(2) of the Act. The Applicants are not below the age of 25 years, nor are they older than 65 years. Both are more than 21 years older than the child. Section 186(2) of the Act has thus been complied with. The Applicants confirmed that they have been made aware of the consequences of an adoption order as well as the rights of an adopted child. They shall assume all parental rights and duties of the biological parents in respect of the child. The child shall have the right of inheritance alongside that of the male Applicant's 2 biological children. I am satisfied that the Applicants fully understand that the adoption order is final and binding during the lifetime of the child and cannot under any circumstances give up the child. From the aforesaid reports, the Court is further satisfied that the Applicants have the financial resources, social and emotional capability to bring up the child.
6. The Applicants have nominated ETK, the female Applicant's sister and her husband WJM to be the legal guardians of the child, in the event of the Applicants dying or becoming incapacitated before the child is of full age. Their consent dated 12.3.22 is on record.
7. Before I conclude, I must state that I am aware that following the enactment of the *Children Act*, 2022, the National Council for Children Services established under Section 41 is now charged with the responsibility of certifying and declaring a child free for adoption, under Section 42(cc). In the now repealed Act, this responsibility lay with the registered adoption societies. However, the I am also aware that the rules in accordance with which the National Council for Children Services is required to declare a child free for adoption as required under Section 184(1)(a), are yet to be promulgated. Article 53(2) of *the Constitution* provides that a child's best interests are of paramount importance in every matter concerning the child. In light of this I have accepted the certificate declaring the child free for adoption as issued by Little Angels Network. To stay the adoption orders sought herein pending the promulgation of the rules and regulations, would militate against the best interests of the child. The Act was assented to on 6.7.22 while the date of commencement of the Act was 26.7.22. The Act has thus been in operation for a period of over 18 months. This is too long a period for the Act to operate without the requisite rules and regulations.
8. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interests of the child that he be adopted by the Applicants. The Court is further satisfied that all the legal requirements for a local adoption have been met and makes the following Orders as prayed in the Originating Summons herein:
  - a. The Applicants JNNK holder of national identity card number (Particulars withheld) and his wife CWK holder of national identity card number (Particulars withheld) are hereby allowed to adopt Baby MB alias BP who shall henceforth be known as SMBK .
  - b. The child's date of birth is hereby declared to be 6.1.22.



- c. The child is hereby declared to be a Kenyan citizen by birth.
- d. I direct the Registrar General to enter this order in the Adoption Register.
- e. ETK and her husband WJM are hereby appointed the legal guardian of the child, in the event of the Applicants dying or becoming incapacitated before the child is of full age.
- f. The appointment of Sandy Nyanchera Ogechi, the guardian ad litem now stands expired.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 14<sup>TH</sup> DAY OF FEBRUARY 2024**

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**M. THANDE**  
**JUDGE**

