



**In re Baby MK (Baby) (Adoption Cause 5 of 2022)
[2024] KEHC 1277 (KLR) (7 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1277 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
ADOPTION CAUSE 5 OF 2022**

TA ODERA, J

FEBRUARY 7, 2024

**IN THE MATTER OF ADOPTION UNDER SECTION
183 OF THE CHILDREN’S ACT, ACT NO. 29 OF 2022**

AND

IN THE MATTER OF ADOPTION OF BABY MK 1 YEAR 8 MONTHS.

IN THE MATTER OF

**EAN 1ST APPLICANT
MHO 2ND APPLICANT**

RULING

1. By a Chamber Summons Application filed by the firm of G.M. Nyambati & Co. Advocates and dated 9.9.2023, and brought under Section 160 of the Children’s Act 2001, the Applicants sought the following orders:
 1. That NKM of P.O. Box xxxx-40200 Kisii be appointed the guardian ad litem to Baby MK 1, minor aged 8 years for the purposes of updating the court about the welfare of the minor during the proceedings.
 2. That leave be granted to EN & MHO to adopt baby MK.
 3. That the consent of the natural parents and relatives of the minor be dispensed with on the ground that the case falls within the following provisions of section 159 of the *Children’s Act* 2001 that is to say;
 - a. That the infant was abandoned at birth.
 - b) That the persons whose consent is required in respect of the adoption cause herein are unknown and cannot be traced.



- c) That the costs of this application be in the cause.
2. The grounds on the face of the Application are that
- i. The infant was found abandoned and the biological parents are unknown.
 - ii. That the identity of the infant's birth parents remains unknown to date.
 - iii. The infant was abandoned and placed before Lewa Children home in compliance with adoption rules and the little angels network as the adoption agent have prepared the necessary paper work.
3. The Applicants swore a joint Affidavit dated 9.9.23 in support of the Application. They deponed that the minor was placed for adoption and subsequently declared free for adoption by Little Angels Network. They deponed that the Minor's biological parents are unknown as he was abandoned. They further fronted Nancy Kawira Muthengi who they described as a person of good standing and independent to act as the Minor's guardian ad litem. They deponed that he had no adverse interests and she has expressed willingness to act as guardian ad litem.
4. The proposed guardian ad litem swore an Affidavit on 9.9.23 2023. He deponed that she fully knows Applicants, Enos Andoli Ndeke and Medina Hoka Okonda and that he was willing to serve personally as guardian ad litem to the baby herein. He deponed that he was not under any influence or motivated by any external considerations but his sole interest was that of the Minor's best interest. He deponed that he is a civil servant employed by TSC with the Government and therefore had sufficient income s per her pay slip NKMO-1. He also deponed that he had no adverse interest to the Minor being adopted as he was also a family man with three children.
5. I saw the subject, the applicants and the intended guardian ad litem in court on .23.1.24 when they appeared in this court.
6. I also examined the proposed guardian ad litem. She stated that she knew the applicants herein and also understood what her role would be if approved to be a guardian ad litem.

Determination

7. I have considered the Application and the hearing conducted.
8. The Minor was declared free for adoption by Little Angels Network on 18.10.2021. There is also a report from the said Little Angels Network on the adoption of the Minor that recommended the adoption of the Minor by the Applicants, Minor's Passport, the area Chief's consent dated 26.8.2022, applicant's marriage certificate, certificate declaring the child free of adoption dated 5.1.22, identity cards of the applicants, of a pre-placement report dated 2.3.22 and bank statement of the applicants among other documents.
9. They are all in support of the Minor's adoption by the Applicants.
10. Section 188 of the *Children's Act*, Act No. 9 of 2022, provides for the appointment of a guardian ad litem for purposes of adoption. Section 188(2) provides thus: -
188. Appointment of guardian ad litem for purposes of adoption
- (2) The guardian ad litem shall be under duty to-
 - (a) safeguard the interests of the child pending the determination of the adoption proceedings;



- (b) investigate and report to the Court on the facts and circumstances relating to the adoption of the child;
- (c) make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child;
- (d) intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act; and
- (e) undertake such other duties as the Court may from time to time direct, or as may be prescribed by the rules.

11. The First Schedule of the [Children Act](#), No. 9 of 2022 provides for the best interest considerations.
12. On the basis of the application herein and the documents presented by this court and the examination by this court of the applicants and the intended guardian ad litem. I find that the proposed guardian ad litem is fit to be appointed as a guardian ad litem under section of the 188 (1) [Children Act](#) 2022 in the best interest of the minor. I partially allow the application dated 9.9.2022 in terms of prayer 1 and 3 and make the following orders:
- a. I order that the guardian ad litem must prepare a concise and accurate report as per Section 188 of the *Children's Act* and submit it to court within 3 months from today.
 - b. The applicants to avail the report by the National Council for Children Services freeing the child for adoption within 3 months from today.
 - c. Mention on 8.5.24
 - a. There will be no order as to costs.

DATED, DELIVERED AND SIGNED AT KISII THIS 7TH DAY OF FEBRUARY 2024.

TERESA ODERA

JUDGE

In the presence of:

Mokaya I hold brief for GM Nyambati for the Applicants

1st applicant present

Oigo - Court Assistant

Mokaya: May we be supplied with a copy of the ruling

Order: Granted.

T.A ODERA

JUDGE

