



REPUBLIC OF KENYA



**In re Baby BPGA (Minor) (Adoption Cause E017 of 2023)  
[2024] KEHC 4166 (KLR) (12 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4166 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E017 OF 2023  
G MUTAI, J  
APRIL 12, 2024  
IN THE MATTER OF THE CHILDREN ACT, (NO. 29 OF 2022)  
AND  
IN THE MATTER OF B-P GA (MINOR)  
AND  
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION BY JAO**

**JUDGMENT**

1. The Applicant, JAO, is the sister of the mother of the minor. the minor, B-P GA is the daughter of FPOO and LAO. She was born on 10<sup>th</sup> February 2014. At the time of her birth, F and L weren't married to each other.
2. LAO died on 20<sup>th</sup> March 2016 in Durban, South Africa. The cause of death was given in the abridged death certificate as "natural causes". Upon her demise, BPGA (minor) was placed in the care and protection of the Applicant. She has been with the Applicant since 2017, when she was 3.
3. Desirous of adopting the minor, the Applicant filed the Originating Summons dated 21<sup>st</sup> November 2023. In the said summons, she sought the following orders:-
  1. That the Director of Children Services be ordered to conduct investigations as to the suitability of the Applicant to adopt B-P GA (minor);
  2. That the Applicant be authorized to adopt B-P GA (minor);
  3. That the records at the Registrar of Births and Deaths be rectified and the minor herein be issued with a birth certificate in the name of B-P GA (minor);
  4. That the Registrar General be ordered to make appropriate entries in the Adopted Children's Register in respect of B-P GA (minor);
  5. That B-P GA (minor) is a Kenyan Citizen by birth and be issued with a Kenyan passport.



4. In her statement in support of the application, the Applicant stated that she is a 31-year-old Kenyan citizen by birth. She has one child, FP, who was born on 21 May 2018. The Applicant professes the Christian faith, as does the minor. She averred that they had developed a strong emotional bond and that she looked after the minor like she was her own. She does not desire to change the name of the child.
5. The Applicant attached to the application the Certificate to Declare a Child Free For Adoption and the Report to Declare a Child Free For Adoption. Both these documents were prepared and issued by the Change Trust Adoption Society, a Social Enquiry Report by the said agency as well as other supporting documents that the Court has reviewed at length.
6. The Applicant also attached documents that show that the minor's biological father is aware of the proposed adoption and has consented to it.

### **Appointment of the Guardian ad litem**

7. The Applicant filed a Chamber Summons application dated 21<sup>st</sup> November 2023, vide which he sought to have CMM appointed as a guardian-ad-litem and for the said guardian ad litem and the Director of Children Services to conduct, prepare and file social enquiry reports. The said application was heard in open Court on 31<sup>st</sup> January 2024. Being satisfied that the proposed guardian-ad-litem was suitable I appointed her as such. I directed that both she and the Director of Children's Services file the requisite reports within 30 days. I fixed the matter for hearing on 5<sup>th</sup> March 2024.

### **Hearing of the Originating Summons**

8. This matter was heard on 5<sup>th</sup> March and 5<sup>th</sup> April 2024. A total of 5 witnesses testified. I shall set out the testimonies of the Witnesses in the succeeding paragraphs of this judgment.
9. The first Witness for the Applicant was EMN. Mr. N is the Managing Trustee of the Change Trust. He testified that they carried out an assessment of the Applicant and issued a certificate declaring the minor as being free for adoption. The said certificate has serial number 0025. He recommended the adoption as the Applicant qualifies to adopt the minor.
10. The Applicant was the second witness. She is a registered nurse working at [Particulars Withheld] Hospital. She stays at Bamburi Mtopanga. The minor is her niece, being her late sister's daughter. The Applicant is aware that an adoption order is permanent once given. It was her testimony that the child's biological father, who works as a security officer consented to the adoption application and signed a consent.
11. The third Witness was WOO. Mr. OO is the father of the Applicant and the late L. He testified that L died from Leukemia while undergoing treatment in South Africa. Mr. OO is the proposed Legal Guardian. He expressed his readiness to be the legal guardian of the child.
12. The fourth witness was CMM. C is a nurse at [Particulars Withheld] Hospital and the court-appointed guardian-ad-litem. She produced her report, in which she recommended that the adoption order be issued.
13. Ms Njeri Mwangi of the Directorate of Children Services Mombasa was the fifth Witness. Ms. Mwangi testified that they conducted a social enquiry and visited the home of the Applicant on 6<sup>th</sup> March 2024, whereafter they prepared a report dated 12th March 2024 which report was filed on 2nd April 2024. She stated that the application was for kinship adoption. Her department, with a view to satisfying



itself of the suitability of the Applicant, got in touch with the child's biological father. The said father consented to the application. Ms. Mwangi recommended the adoption.

14. The 6<sup>th</sup> and last witness was FPO. Mr. O is the biological father of the minor. He works in Doha, Qatar. Mr. O testified that he had no objection to the application. When asked if he knew that adoption is permanent and irreversible, he confirmed that he was indeed aware.

### **Analysis and Determination**

15. I have seen the pleadings, the supporting documents, the report of the Directorate of Children Services, and that of 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 whether the minor is available for adoption, whether the Applicant is fit to adopt her, and, most importantly, whether the adoption is in the best interest of the child.
16. This is a kinship adoption. The Applicant is the aunt of the child. The child's mother is deceased, while his father has consented to the adoption.
17. Since the child's mother was a Kenyan it is clear that she too is of Kenyan nationality.
18. 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.
19. Concerning the Applicant's suitability, she is a Kenyan citizen aged 32 years, which places her 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 Applicant has been described as financially stable. She has no criminal record. Since the placement of the minor into her custody, the child has fully bonded with her. She understands the consequences of adoption and knows that once an adoption order is made, it is permanent.
20. Consequently, I have no doubt that she has met the necessary requirements to adopt MF. 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.”
21. 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 child.
22. 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.”
23. As stated earlier, the child's mother died. Her father has consented to the application. In any case he does not appear to have played any role in the minor's life. The minor needs basic necessities like food,



shelter, education and clothing, which the Applicant has stepped in to provide. From the evidence adduced, she has fully integrated with Applicant. 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**

24. Based on the foregoing, I find and hold that the adoption application has merit. Consequently, I issue the following orders: -
1. B-P GA (minor) is hereby declared a Kenyan citizen by birth;
  2. The Applicant, JAO, is hereby authorised to adopt B-P GA (minor);
  3. B-P GA (minor) shall retain her name B-P GA;
  4. WOO is hereby appointed as the Legal Guardian of B-P GA (minor) and entrusted with the responsibility of taking care of her in the event that the Applicant becomes deceased or is otherwise permanently unable to take care of her before she attains the age of majority;
  5. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of B-P GA as being 10<sup>th</sup> February 2014, in the Adopted Children's Register; and
  6. The guardian-ad-litem, CMM, is hereby discharged.
25. Orders accordingly.

**DATED AND SIGNED THIS 12<sup>TH</sup> DAY OF APRIL 2024 AT MOMBASA.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

No appearance for the Applicant;

Arthur - Court Assistant.

