



**In re LN (Child) (Adoption Cause E019 of 2023)
[2024] KEHC 4866 (KLR) (12 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4866 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E019 OF 2023**

G MUTAI, J

APRIL 12, 2024

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION
OF BABY LN BY DKM AND NN (THE JOINT APPLICANTS)**

BETWEEN

DKM 1ST APPLICANT

NN 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

Introduction

1. The Joint Applicants are Kenya adult male and female respectively of sound mind. They got married to each other on 13th December 2008 at Faith Victory Church in Changamwe, Mombasa under the Marriage Act (Cap 150) (now repealed). D was born on 1st January 19XX in Makueni, while N was born on 1st January 19XX. They do not have biological children of their own. The Joint Applicants reside at XXXX, in Mombasa, profess the Christian faith and are of the African race.

The Pleadings

2. The Joint Applicant wish to adopt Baby LN. With a view to doing so, they filed the Originating Summons dated 11th December 2023. In the said Summons, they sought the following orders:-
 1. Pursuant to Article 14(4) of the Constitution of Kenya, 2010 and Part II, Section 7(1) of the Children Act, 2022, this Honourable Court be pleased to declare the child Baby LN, a Kenyan citizen by birth;



2. Pursuant to the provisions of Section 187 of the *Children Act*, 2022, this Honourable Court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of Section 186 of the *Children Act*, 2022;
 3. The Applicants, DKM and NN, be authorized to adopt Baby LN;
 4. Upon the making of the adoption order, the child be known as AM;
 5. Upon the making of the adoption order, AKM and JMK be appointed Legal Guardians of the child as provided for by the provisions of Section 188 of the *Children Act*, 2022; and
 6. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of birth of the child as 26th January 2022 in the Adopted Children Registrar as provided for by Section 201 of the *Children Act*, 2022.
3. The Originating Summons is supported by the Affidavit in Support, Verification Affidavit, Statement in Support of the Adoption Application, and various annexed documents, including a Report to declare a child free for Adoption pursuant to Section 156 (1) of the *Children Act*, 2022, Certificate of Declaring a Child Free for Adoption (Serial No. XXXX), Pre-Placement Report dated 7th July, 2022, evidence of means, police clearance certificates (for both applicants), immunization cards and photographs of the minor with the joint applicants.
 4. In the Statement in Support of the Application, the Joint Applicants stated that the child was placed under their joint care and possession on 29th December 2022 upon the execution of the Foster Care Agreement with New xxx xxx Trust. The child was declared as being free for adoption on xth xxxx 2022, by xxx xxx Network. The said body assessed the Joint Applicants and prepared a report. They averred that they have the financial wherewithal to take care of the child as D is a County Officer while N is a businesswoman. They are both emotionally and physically fit and have no criminal record. If the adoption application is allowed, they propose to call the child AM.
 5. Regarding the child, he was found abandoned at Kiru Village in Kenyena Sub County on 27th January 2022 and was rescued by a Good Samaritan. The child was taken to Kenyena Sub County Hospital for medical examination. The matter was reported to Kenyena Police Station and was booked under OB Entry No. XXXX/2022. The child was committed to the xxx xxx xxx Trust Kisumu *vide* Care and Protection Cause No. Mcp & Cco/xxx of 2022 for a period of 3 years on 3rd February 2022 and was thereupon admitted to the said institution.
 6. Efforts to trace the child's parents or relatives were unsuccessful. On 7th October 2022, Little Angels Network issued a Certificate Declaring a Child Free for Adoption (Serial No. XXXX).

Appointment of the Guardian-ad-litem

7. The Joint Applicants also filed a Chamber Summons application dated 11th December 2023 vide which they sought to have JNM of Mombasa appointed as a guardian-*ad-litem* in respect of this adoption cause. The said Summons was heard on 8th February 2024. Being satisfied on the basis of the evidence adduced I appointed the said person as the guardian-*ad-litem* and ordered her to prepare a statutory report in terms of Rule 9 of the *Adoption Rules* and to submit the same to the Court within 30 days. I also ordered the County Director of Children Services to prepare a Social Enquiry Report in respect of the instant adoption proceedings and to submit the same to the Deputy Registrar of this Court within the said period of 30 days and listed the cause for hearing on 12th March 2024.



Hearing of the Originating Summons

8. This matter was heard on 12th March and 8th April 2024. A total of 5 witnesses testified.
9. The 1st Witness was JMW. Mr. W is a social worker with xxx xxx Network. He testified that they carried out an assessment of the Joint Applicants and declared the child free for adoption *vide* Certificate Serial Number XXXX. He recommended the adoption by the joint applicants.
10. The 1st Applicant was the 2nd witness. D works for the County Government of Mombasa as the Enforcement Officer. The Co-Applicant is his wife. He testified that they got married in 2008 and have no children of their own. He further testified that he was aware that adoption is permanent and that the child will have inheritance rights. It was his evidence that his family supported the proposed adoption. If the adoption application is successful they propose to rename the child AMD.
11. The 2nd Applicant was the 3rd Witness. She, too, is aware that the adoption is permanent and that the child will have the right to inherit their property. She averred that as a parent, she would correct the child whenever he erred.
12. The guardian-ad-litem was the 4th Witness. She testified that she visited the family at their home. In her opinion the Joint Applicants' home environment was suitable. The child has room to play. She recommended the adoption.
13. The 5th and last Witness was Ms NM of the Children's Department Mombasa. Her department conducted a home visit on 11th March 2023. Thereafter, a report was prepared and subsequently filed on 29th March 2024. It was her testimony that the Children's Department, Mombasa, had no objection to the application.

Analysis and Determination

14. I have considered the application herein, the documents in support thereof and evidence of the various witnesses. The issues that emerge for determination are whether the child is available for adoption, if the Joint Applicants are fit to adopt the baby, and, most importantly, whether the adoption is in the best of the child.
15. I have already set out the circumstances under which the child was found. The child was abandoned immediately after birth. Nobody has come forward to claim him. Given the period that has elapsed since the said occurrence, it is most unlikely that the biological parents will ever turn up. The need for consent pursuant to sections 186(8) and 187 of the *Children Act, 2022* is therefore dispensed with. I am guided by the case of *In re HN (Baby)* [2020] eKLR, where the court stated:-

“As there is nobody laying claim over the baby, the requirement for consent is hereby dispensed with pursuant to Section 159(1) of the *Children's Act*. In view of the above consideration, it is my finding that the child is available and suitable for adoption.”
16. Regarding the baby's nationality, it is clear from the evidence adduced that he was found abandoned immediately after his birth. Article 14(4) of *the Constitution* of Kenya, 2010 states that a child who is less than eight years of age and whose nationality and parents are not known is presumed to be a Kenyan citizen by birth. In view of this provision, the child herein is presumed to be a Kenyan citizen by birth.
17. In terms of age, the child is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive baby 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.

18. Concerning the Joint Applicants' suitability, they are Kenyan citizens aged 45 and 39 years, respectively, at the time of this judgment, which places them within 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. From the records that I have seen, the joint applicants have the means to take care of the child. They have no criminal records. 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.

19. 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.”

20. 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.

21. 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.”

22. The child herein was found abandoned. He, therefore, needs basic necessities like food, shelter, education and clothing. He has fully integrated with the Joint Applicants. 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

23. The upshot of the foregoing is that, in my view, the application has merit. Consequently, I issued the following orders:-

1. LN (child) is hereby declared a Kenya citizen by birth;
2. The consent of the biological parents of the child to the adoption is hereby dispensed with;
3. The Joint Applicants, DKM and NN, are hereby authorized to adopt LN (child);
4. LN (child) shall henceforth be known as AM;



5. AKM and JMK are hereby appointed as the Legal Guardians of AM(child) and entrusted with the responsibility of taking care of him in the event the Joint Applicants become deceased or are otherwise permanently unable to take care of him before he attains the age of majority;
 6. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of AM as being 26th January 2022 in the Adopted Children's Register; and
 7. The guardian-ad-litem Janet NM is hereby discharged.
24. Orders accordingly.

Dated and signed this 12th day of April 2024 at Mombasa.

GREGORY MUTAI

JUDGE

In the presence of:-

Ms Ngugi, for the Joint Applicants; and

Arthur – Court Assistant.

