



**In re TN (Child) (Adoption Cause E017 of 2023)  
[2024] KEHC 4643 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4643 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ADOPTION CAUSE E017 OF 2023  
MW MUIGAI, J  
APRIL 11, 2024  
IN THE MATTER OF CHILDREN ACT 2022  
AND  
IN THE MATTER OF CHILD, TN**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. The Applicants herein, PMN – ID. Number (Particulars withheld) and MMP - ID. Number (Particulars withheld) (“the Applicants”) sought by their application to be allowed by this Court to adopt child TM (hereafter “the minor”).
2. Vide Exparte Originating Summons Application dated 24/07/2023 the Applicants sought among other orders; that the Applicants herein PMN and MMP be authorized to adopt the child currently identified as TN a minor who is to be known as TMP ; that the child’s date of birth be declared to be 11<sup>th</sup> November, 2006 and his place of birth be declared to be Nairobi County; that the child be presumed to be a Kenyan citizen by birth and as a consequence, be entitled to the rights and benefits of a Kenyan citizen, including being issued with a Kenyan Passport whenever desired, the consents of the biological parents/guardian be dispensed with, the Guardian ad litem be discharged; and that BMD and TNM be appointed as the Legal Guardians of the child in event that the Applicants herein are incapacitated or in any way unable to discharge their parental obligations and that the Registrar General be directed to make the appropriate entries in the Adopted Children’s Register.
3. The Applicants sought further orders that Abraham Ngenye Mbita of ID No.(Particulars withheld) be appointed as Guardain Ad litem in this cause. Abraham Ngenye Mbita was appointed by this Court as the Guardian Ad Litem on 26/09/2023 for the purpose of these Adoption proceedings.



4. The child (TN ) the subject of the present adoption proceedings was presumably been born on 11/11/2006. On 11/02/2007 a lady who is assumed to be the mother of the child was at Maria Hospital in Kayole. While there she approached a lady and requested her to hold her child (the child was estimated to be approximately four months old) as she went to buy credit but she never came back for her child. On 13/02/2007 the lady (the Good Samaritan) reported the matter to Kayole Police Station but the OB was not recorded. The child was admitted to Imani Children's Home for care and protection on the same day. On 12/09/2008 the child was committed by the Children's Court in Nairobi vide Care and Protection Case No. 285 of 2008 to the legal custody of Imani Children's Home for a period of three years.
5. On 9/08/2016 the Embakasi Sub County Children's Officer wrote to the Court requesting to re-commit the child at Imani Children's Home which order the Court granted on 3/05/2017 and child was re-committed at the Home for another three years. On 1/04/2019 officer Pius Melly issued the initial Police letter addressed to the Director of Imani children's Home requesting the Director to accommodate the child as investigations were being conducted. On 3/04/2019 the matter of abandonment was recorded vide OB No. 38/3/4/2019. On 16/10/2019 the final police letter from Kayole Police Station was issued stating that no parent and/or relative had ever come to claim the child. Imani Children's Home also reported that during the child stay at the institution, no parent or relative turned up to claim the child or received any information from the Department of children services and police department regarding the said child. The child remains unclaimed to date.
6. The minor was freed for adoption by the Kenya to Kenyans Peace Initiative (KKPI) Adoption Society vide Certificate Declaring Child Free for Adoption Serial No.838 dated 23<sup>rd</sup> October, 2019.
7. The following documents were availed from Kenya Children's Homes Adoption Society for child TN .
  1. Initial Police Letter from Kayole Police Station dated 1/04/2019.
  2. Letter from the Sub-County Children's Officer
  3. Committal order
  4. Final police letter from Kayole Police Station dated 16/10/2019
  5. Home study report from KKPI Adoption Society
  6. Certificate declaring child free for adoption.
8. The Applicants herein PMN and MMP of identification numbers (Particulars withheld) and (Particulars withheld) respectively are residents of (Particulars withheld) within Makueni County. They are husband and wife - married on 7/05/1988 as per attached copy of marriage certificate Serial Number (Particulars withheld). The Applicants annexed the following documents in support of their application; Applicants copies of Identification cards Certificate of Marriage Applicants payslips and savings booklet Letter of confirmation of plots ownership Medical Reports for both Applicants Police clearance Certificates for both Applicants Letters of Referees Guardian ad litem Affidavit of fitness Legal Guardians letter of Consent and copies of their Identity Cards.
9. Pursuant to the *Children Act*, 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, Rev. Abraham Mbita of ID No.(Particulars withheld) 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 to Kenyans Peace Initiative (KKPI) Adoption Society filed their report in Court on 5/03/2024. Ms Jackline Wambui from the Society appeared in Court on 5/03/2024 in respect of these Adoption Proceedings and recommended the adoption.
12. According to the Report the Applicants made a joint adoption application to Kenya to Kenyans Peace Initiative (KKPI) Adoption Society in November, 2017 and it was their 1<sup>st</sup> adoption. The Applicants are a couple having been married in the year 1988 vide Certificate of Marriage Serial Number (Particulars withheld). The Applicants do not have any child of their own. Their motivation towards adoption is due to their love for children and also make their family larger.
13. The Applicants lives in their own 3 bedroomed house with a sitting room, study room and bathroom. The house is situated in a secure area. The house is well serviced with solar power and they harvest water from the rains. 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 extended family are supportive of the Adoption whereby the Applicants have appointed the BMD and TNM (Mr. BMD is the 1<sup>st</sup> Applicant's nephew) as the proposed Legal Guardians of the child.
14. They have accepted to be the Legal Guardians and confirmed that they understand their roles as Legal Guardians and can comfortably take care of the minor in event of their demise or incapacitation.
15. The Applicants are stable financially, they have a joint income of about kshs.40,000/- per month from employment and farming. The Applicants assets include the land where they currently live on and several plots. Both the Applicants works as Religious Ministers at the (Particulars withheld)Church. The Applicants fellowship at (Particulars withheld) where Mary Munyiva is a Pastor. The Applicants have a medical cover through NHIF and wish to include the minor once the adoption process is finalized. On observation the Applicants seems to have adequate means, both financially and socially to cater for the needs of a child. The Adoption Agency recommended the Adoption.
16. The Director of Children's Services filed their report dated 17/11/2023 and filed in Court on 22/11/2023 in respect of the proposed adoption of the child by the Applicants. Emily Kimanzi the Machakos Sub County Children Officer appeared in Court on 5/03/2024. She told the Court that the Applicants lives in their own home built in their own land. She interviewed the minor and found that he had integrated well. The Applicants are stable financially and are committed Christians.
17. Similarly the Report indicated that during the home visits it was observed that the Applicants lives in a 4 bedroomed in a 1 acre piece of land. They also owns 10 pieces of land around where they live where they practice farming and grow trees. They have also built on 2 plots that they own in the market where they have constructed rentals. The Applicants intend to give the minor good education, parent him according to God's work and make the minor their heirs. The extended family are supportive of the arrangement. They recommended the adoption.
18. The Guardian Ad Litem, Rev. Abraham Mbita filed his Report dated 11/12/2023 in Court on 13/12/2023 in support of these Adoption proceedings. He appeared in Court on 5/03/2024. He told the Court that the minor is in the right hands and that the Applicants will take care of the minor and the adoption is in the best interest of the minor.
19. Similarly the Report indicated that he has known the Applicants for a period of over thirty (30) years. The Applicants have one son GM whom they had successfully adopted back in the year 2019. TN the



minor in these proceedings was placed with the applicants on 31<sup>st</sup> October, 2019 at the age of 12 years and the Applicants have been taking good care of him since then. The minor has bonded well with the elder brother GM. The Applicants have offered parental love, care and guidance to the minor as well as providing his needs. The minor has grown to know Mr & Mrs PMN as his parents. The Applicants have support from their family which has fully welcomed the minor as part of the family. The Guardian Ad litem recommended the adoption.

20. The Legal Guardians BMD and TNM - of Identification Card Numbers (Particulars withheld) and (Particulars withheld) respectively are a married couple (nephew to the 1<sup>st</sup> Applicant) they filed their Affidavit of Fitness and Consent sworn on 24/07/2023 and filed in Court on 4/02/2018 respectively stating that they will take over the matter in case of any eventuality.
21. TN the child subject of these proceedings appeared in Court on 5/3/2024. He told the Court that he wants to remain with the Applicants and be adopted.
22. 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.
23. 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, PMN and MMP are hereby allowed to adopt child TN .
3. Henceforth, the child shall be known as TMP .
4. The child's date of birth is 11<sup>TH</sup> November, 2006 and the place of birth shall be NAIROBI COUNTY.
5. The child is a Kenyan Citizen by birth and entitled to all rights of a Kenyan citizen.
6. BMD and TNM 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 11<sup>TH</sup> DAY OF APRIL, 2024 (PHYSICAL/VIRTUAL CONFERENCE).**

**M. W. MUIGAI**

**JUDGE**

In the presence/absence of:

Ms L. Mbuvi - for the Applicants

Geoffrey/patrick - Court Assistant(s)

