



**In re MO alias GM (Baby) (Adoption Cause E167 of 2023)
[2024] KEHC 4743 (KLR) (Family) (3 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4743 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ADOPTION CAUSE E167 OF 2023

PM NYAUNDI, J

MAY 3, 2024

IN THE MATTER OF THE CHILDREN ACT, 2022

AND

IN THE MATTER OF BABY MO ALIAS GM

IN THE MATTER OF

PKM 1ST APPLICANT

JWN 2ND APPLICANT

JUDGMENT

1. Vide Originating Summons, dated 28th August, 2023 the Applicants herein seeks the following orders, that:-
 - i. To Adopt Baby MO Alias GM (hereafter “the child”)
 - ii. The child be called MK
 - iii. That the Registrar-General be directed to make the appropriate entries in the Adopted Children’s Register.
 - iv. The child’s date of birth be 11th November, 2021.
 - v. The child be presumed to be a Kenyan Citizen by birth
 - vi. The Director Immigration be authorized to issue the child with a Kenyan Passport.
 - vii. ESK and MWG be appointed as Legal Guardian of the minor.



2. The Applicants are Kenyan Citizens by birth residing in Kiambu County. They got married under Kikuyu Customary Law and later celebrated their marriage on 1st August, 2012 at the office of the Registrar as per the marriage Certificate Serial Number xxxxx . Both Applicants are self-employed business people in the tourism industry in Nairobi.
3. It's their averment that their wish to have their own children borne no fruits due to reasons beyond their control hence made an application to Little Angels Network Adoption Society seeking to adopt the child herein.
4. On the online platform in Court, the Applicants stated that the minor has been in their custody of 3 years. They fully understand that the minor will have full rights of biological child, they further stated that they understand that an adoption order is not reversible. They further stated that their family and close friends supported the adoption process and it's their statement that they understand legal implications of an adoption order. The Applicants have the means to provide for the child.
5. The Applicants averred that after making an application to Little Angels Network Adoption Society, they placed the minor herein into their custody on 11th July, 2022 for fostering for a period of three months with a possibility of adoption the minor.
6. The Child herein (Baby MO Alias Baby GM) is the subject of the present adoption proceedings is presumed to be 2 years and 5 months old having been born on 11th November, 2021. The child was found abandoned at Jua Kali Market in Kakamega Town on 15th November, 2021 by Phostin Okech. Ms. Okech reported the matter at Kakamega Central Police Station and was recorded vide OB No. 82/15/2021.
7. On 18th November, 2021, the minor was released from Kakamega County General Hospital and the child was referred to Spring of Life Children's Home for care and protection on 18th November, 2021.
8. Consequently, the Chief Magistrate's Court at Kakamega in accordance with Section 119 of the Children Act 2022, committed the child to Spring of Life Children's Home vide Protection and Care Case No. E003 of 2022. The child was placed in the custody of the Applicant on 11th July, 2022 for mandatory bonding prior to adoption. The minor has since then been in the continuous custody and care of the Applicants and has since enjoyed the parental love, care and good nurturing accorded to him by the Applicants.
9. According to correspondence from relevant Investigating Officers no one has come forward to claim the child and that the efforts to trace the mother or the child's relatives have been futile.
10. Consequently, Little Angels Network Adoption Society issued a certificate declaring the child free for adoption pursuant to Section 156(1) of the Children Act. The said Freeing Certificate is Serial No.002270 and the same is dated 8th June, 2022.
11. An application dated 28th August 2023, the Applicants sought orders that MWG be appointed as the child's guardian ad litem and the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit report.
12. On 12th October, 2023 this Court issued an order appointing MWG as the child's guardian ad litem and further directed that she and the Director of Children's Services to file their respective reports in Court within 45 days.
13. Pursuant to Section 156(1) of the Children Act, before this matter came up for hearing, Carolyne Olilo Senior Children's Officer prepared and filed a favourable report on 5th December, 2023 and the same



was countersigned by Mary Asati Assistant Director in respect of the proposed adoption of the child by the Applicants where she stated that the Applicants have met the requirements for local adoption as provided in the *Children Act*, 2022 and other enabling provisions of the Law. The Applicants are financially stable to take good care of the child. They have financial ability to cater for material needs of the child herein.

14. The Applicants further nominated ESK and MWG who are their family friends for 13 years to be their legal guardians of the child in case of any eventuality arises. They understand what the role entails in the event of eventuality, they will take on full parental responsibility and having the minor being declared free for adoption by Little Angels Network Adoption Society, he recommends the Applicants to adopt the child.
15. Additionally, a similar favourable report from Adoption Society also stated that the minor has been under the care and control of the Applicants. The Applicants wants to expand their family by adopting a child and they have the means to adequately and sufficiently provide for a child. They have good family ties and good friends who have offered and continue to offer support during the adoption process hence recommended for the adoption as it will be in the best interest of the child to be adopted by the Applicants.
16. The guardian ad litem MWG also filed a statutory report on 28th November, 2023 under Section 188 of the *Children Act*, 2022 the Applicants are capable of raising the child she observed and stated that the child feels safe and loved by the Applicants.
17. The Applicants are of good health and financially capable of taking care of the child. They have no criminal record as evidenced by Police Clearance certificates of Serial Numbers PCC-B5Txxxx and Serial Numbers PCC-PPTxxxx.
18. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicants and have recommended that this Court allows the Applicants to adopt the child. This Court has evaluated the facts of this adoption.
19. This is a Local Adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological parents of the child was dispensed with since the child was abandoned at birth. This Court has satisfied itself that the Applicants are qualified and able to take care of the child.
20. The home visits by the guardian ad litem and the Director of the Children's Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. 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 with him.
21. The proposed legal guardians attended Court and confirmed that they have given their consent to act as legal guardians in case of any eventualities.

Determination

12. After carefully assessing the records herein, I am satisfied that the Applicants have fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the *Children Act*, 2022 provides. The court may make an adoption order on application by-

(1)

- (a) Sole applicant; or



- (b) Two spouses jointly.
- (2) The court shall not make an adoption order in any case unless-
- i. the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - ii. The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
- (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
13. This Court is alive to the jurisdiction of the High Court vide Article 165 Constitution of Kenya 2010 and Section 183(1) *Children Act* 2022. The Court is conscious of the law; Article 53 Constitution of Kenya 2010, Section 8 of *Children Act* 2022 and the UN Convention on the Rights of the Child & African Charter on the Rights & Welfare of the Child all amplify on the best interests of the child.
14. The Court has evaluated the facts of this Local Adoption from the Reports filed. It is evident that the Applicants have fulfilled all the legal requirements of a Local Adoption as required under Section 193 of the Children’s Act, 2022. All the necessary Reports and consents required for this Adoption have been filed.
15. Article 14 (4) of *the Constitution* of Kenya 2010 provides that: -
- “(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by Birth.”
13. This Court is therefore of the opinion that this Adoption would be in the best interest of the child and allows the application with ORDERS that;
- a. The Applicants PKM AND JWN are hereby allowed to adopt BABY MO alias baby GM .
 - b. Henceforth, the child shall be known as MK .
 - c. His date of birth shall be 11TH NOVEMBER, 2021 and place of Birth at Kakamega
 - d. He is presumed to be a citizen of Kenya by birth.
 - e. ESK AND MWG are hereby appointed as Legal Guardians of the child
 - f. The Director Immigration is authorised to issue the child with a Kenyan Passport.
 - g. The Registrar General to enter this order in the Adoption Children Register.
 - h. The guardian *ad litem* is hereby discharged.

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 3RD
DAY OF MAY, 2024.**

**P. NYAUNDI
JUDGE**

In the presence of:



Fardosa Court Assistant

