



In re Baby G alias WK alias EM (The Child) (Adoption Cause E018 of 2023) [2024] KEHC 8117 (KLR) (21 June 2024) (Judgment)

Neutral citation: [2024] KEHC 8117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E018 OF 2023**

**G MUTAI, J
JUNE 21, 2024**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION
OF BABY G ALIAS WK ALIAS EW BY EAR (THE APPLICANT)**

BETWEEN

EAR APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

Introduction

1. Vide an Originating Summons dated 30th November 2023, the Applicant 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 Gift alias Willem Karama alias Emmanuel William, 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 requirement of consent to the adoption as required by the provisions of section 186 of the *Children Act*, 2022;
 3. The Applicant EAR be authorised to adopt Baby G alias WK alias EW;
 4. Upon the making of the adoption order, the child to be known as EA;
 5. Upon the making of the adoption order, JR and JA to be appointed Legal Guardian of the child as provided for by the provisions of section 188 of the *Children Act*, 2022;



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 XXX 2022 in the Adopted Children Register as provided for by section 201 of the *Children Act, 2022*; and
 7. The costs of this application be costs in the cause.
2. The Applicant also filed a Chamber Summons application to have Festus Garama Mweni appointed as a guardian-ad-litem.

The Applicant

3. The Applicant is EAR. I shall henceforth refer to her as “E” of “the Applicant”. E was born in XX and is thus 36 years old. She is a citizen of Kenya. She resides within Kisauni Sub County in Mombasa County. E is a single mother. She has a son, BE, who is nine years old.
4. The Applicant is financially, physically and emotionally fit. She stated in her application that the adoption application has the support of her family. E provided a Certificate of Good Conduct from the Directorate of Criminal Investigations. She proposes to rename the child “EA” in the event that the application is successful.
5. The Applicant received the child under her care on 4th January 2023 from the Baby Life Rescue Centre.

The Child

6. The child was abandoned at birth by the birth mother at XXX within the Leisure Basketball Area on 20th March 2022. Ms Lucy Atieno rescued him. Ms Atieno reported the matter at Nyali Police Station, where the case was recorded and booked vide Occurrence Book Number 50/20/03/2022. The child was placed in the temporary custody of the Baby Life Rescue Centre on 20th March 2022. On 24th January 2023, the child was placed under the foster care of the Applicant through the Nyali sub-county Children’s Office. The child has been under her care since then.
7. The Tononoka Children’s Court issued a committed order for the child to continue receiving care and protection of the Applicant on 22nd June 2023 vide care and Protection cause No MCP & CC E169 of 2023 pending the adoption proceedings.

Appointment of a *guardian-ad-litem*

8. As earlier indicated, E filed, together with the Originating Summons, the Chamber Summons application dated 30th November 2023, vide which she sought to have Felistus Garama Mweni appointed as a guardian-ad-litem in respect of this adoption cause and also for an order directing the County Director of Children Services through the Children Department Mombasa to make a home visit and prepare the relevant social enquiry report in respect of this adoption and to submit the same to Deputy Registrar or this Court within 30 days. The application was canvassed by way of viva voce evidence on 7th March 2024.
9. Being satisfied with his suitability, I appointed him as a guardian ad litem and directed that he, as well as the County Director of Children Services, prepare and file reports in terms of Rule 9 of the Adoption Rules and present the same to the Deputy Registrar within 30 days.

Hearing of the Originating Summons

10. I heard the Originating Summons on 17th April and 9th May 2024. Four witnesses testified. I shall briefly set out their evidence in the succeeding parts of this judgment.



11. The first witness was Ms Esther Kalee. Ms Kalee is a resident of Nairobi. She works for Little Angels Network, an adoption agency. Ms Kalee testified that her employer declared the child as being free for adoption on 6th September 2023 upon being satisfied that the child was abandoned at birth. The certificate to declare the child as being free for adoption is serial number XXX. Her employer assessed the Applicant and found her to be a suitable adoptive parent. Ms Kalee recommended the adoption.
12. The Applicant was the second witness. I have already stated her qualifications. Ms R stated that she was motivated to adopt the child by a desire to touch the child's life. She is a single mother of one child, BE. E indicated that she is aware that adoption is permanent and irreversible. She also stated that she knew that the child would, upon the successful completion of adoption proceedings, have the right to inherit her property. She also stated that she had appointed Legal Guardians to take care of the child should anything happen to her. She testified that the child had bonded well with her, her child and her brother.
13. The Third Witness was Felistus Garama Mweni. Mr Mweni is the court-appointed guardian-ad-litem. Mr Mweni is a social worker who supports vulnerable children. He testified that he visited the Applicant at her home at XX. The Applicant resides at Flat No. XXX. In his assessment, the Applicant and the child bonded well. He also testified that he saw the biological child of the Applicant interact with the adoptive child. In his view, there was a good bond between the two of them. He recommended the adoption.
14. The last witness was Ms Njeri Mwangi. Ms Mwangi is a Children's Officer at the Directorate of Children Services Mombasa. She testified that her office conducted a home visit on 24th April 2024. They prepared a report dated 30th April 2024, which was filed on 9th May 2024. It was her testimony that the adoption application herein was a foster care transitioning into adoption. She supported the adoption application.

Analysis and Determination

15. 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 Applicant is fit to adopt the baby, and, most importantly, whether the adoption is in the best of the child.
16. I have already set out the circumstances under which the child was found. The child was abandoned within a few days 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 of the child 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.”
17. Regarding the baby's nationality, the evidence adduced shows that he was found abandoned within a few days of his birth. Article 14(4) of *the Constitution* of Kenya, 2010 states that a child under eight years of age whose nationality and parents are not known is presumed to be a Kenyan citizen by birth. Given this provision, the child herein is presumed to be a Kenyan citizen by birth.
18. Regarding age, the child is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive baby under Section 184 (b) of the *Children Act*, 2022. Further, Section 185(1)



of the said Act 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 36 years, at the time of this judgment, which places her 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 Applicant has the means to take care of the child. She has no criminal records. 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 do not doubt that she meets the 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.”

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 baby.

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. The child herein was found abandoned. He, therefore, needs basic necessities like food, shelter, education and clothing. He has fully integrated with the 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. In my view, the application has merit. Consequently, I issue the following orders:-

1. I declare the child, Baby G alia WK alias EW, a Kenyan citizen by birth;
2. The consent of the biological parents of the child to the adoption is hereby dispensed with;
3. The Applicant, EAR, is hereby authorised to adopt Baby G alias WK alias EW;
4. Baby G alias WK alias EW shall henceforth be known as EA;



5. I appoint JR and JA as the Legal Guardian of Baby EA and entrust them with the responsibility of taking care of him in the event the Applicant becomes deceased or is otherwise permanently unable to take care of him before he attains the age of majority; and
 6. The Register General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of Baby EA as being 4th March 2022 in the Adopted Children Register as provided for by section 201 of the *Children Act, 2022*.
25. I make no orders regarding costs as this is a non-contentious adoption cause.
26. Orders accordingly.

Dated and signed this 21st day of June 2024 at Mombasa. Delivered virtually via Microsoft TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Ms Ngugi for the Applicant; and

Arthur - Court Assistant.

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