



**In re MA (Child) (Adoption Cause 8 of 2018)
[2024] KEHC 7044 (KLR) (12 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7044 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
ADOPTION CAUSE 8 OF 2018**

CW GITHUA, J

JUNE 12, 2024

IN THE MATTER OF THE CHILDREN'S ACT NO.29 OF 2022

AND

IN THE MATTER OF CHILD MA

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY:

IN THE MATTER OF

BMM 1ST APPLICANT

AN 2ND APPLICANT

JUDGMENT

1. By an originating summons (OS) dated 21st September 2018, the applicants moved this court seeking to be allowed to adopt Baby MA. The pleadings show that the applicants are a Kenyan couple who have been married since 1988. They got married in the same year under kikuyu customary and are both residents of Murang'a County.
2. The 1st applicant works as a police officer stationed in Malindi while the 2nd applicant is an employee of the Murang'a County Government. They are currently aged 50 and 52 years respectively but they were 44 and 46 years old respectively at the time they filed the OS. They both profess the Christian faith.
3. From the material presented before the court, it is clear that baby MA was born at the Pumwani Maternity Hospital on 12th March 2015 but before her birth, her mother, then a minor aged 17 years and her guardian who was her maternal aunt visited the Child Welfare Society of Kenya offices and offered to present the yet to be born child for adoption after delivery. After the child's birth, her mother and her guardian persisted in their earlier offer. They willingly and voluntarily executed the necessary



consents on 6th May 2015 after undergoing counselling and being informed of the consequences of their decision.

4. The court record reveals that on 20th May 2019, the court appointed MWW as the child’s guardian ad litem. Subsequently, the Child Welfare Society of Kenya (CWSK) prepared and filed a report dated 6th July 2022 declaring the child free for adoption.

5. Prior to hearing of the summons, the County Coordinator of Children Services and Officers from the CWSK made home visits and made social inquiries to determine the applicants suitability to adopt the child. The two entities made separate reports which were filed on 24th January 2024 and 7th May 2022 respectively. Both reports as well as the confidential report filed by the guardian ad litem dated 29th April 2024 were favourable and strongly recommended adoption of the child by the applicants.

During the hearing, the applicants and the guardian ad litem testified and the court interviewed the child.

6. Having carefully considered the application and the evidence presented before the court, I find that it is not contested that the applicants have had continuous custody, care and control of the child since she was eleven months old to date. The child is now 9 years old and is in Grade 4 at a local primary school. The applicants have undertaken to continue raising Baby MA as they would their biological child and not only give her a home but also an opportunity to maximize her potential and an identity.

7. Upon being interviewed by the court, the child confirmed that she was happy living with the applicants who she described as her parents. She wanted to continue living with them and expressed willingness to be adopted by them.

8. From my analysis of the evidence presented in this matter, I find that the applicants have satisfied all the requirements for a local adoption stipulated in the provisions of the [Children Act](#) of 2022.

I also find that the applicants have demonstrated that they are socially, emotionally and financially capable of providing a warm and stable home as well as a conducive environment for the growth and development of the child. It is worth noting that the applicants are the only parents the child knows.

9. Article 53 (2) of the [Constitution](#) decrees that when considering any decision involving a child, the child’s best interest must be given priority. It provides thus:

“A child’s best interest are of paramount importance in every matter concerning a child”

This constitutional principle has been entrenched in the [Convention on the Rights of the Child](#) at Article 3 (1) which provision is replicated in Section 8 (1) the [Children Act](#) No. 29 of 2022 which provides as follows;

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—

- (a) the best interests of the child shall be the primary consideration;
- (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

10. Section 8 (2) proceeds to state that;

“All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the



interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—

- (a) safeguard and promote the rights and welfare of the child;
- (b) conserve and promote the welfare of the child; and
- (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.”

10. Applying the above principles to the current case, I have no doubt in my mind that it will be in the best interest of Baby MA to be adopted by the applicants. It is the only way that her rights, interests and welfare can be safeguarded and promoted.
11. Consequently, I find merit in the Originating Summons dated 21st September 2018 and it is hereby allowed on the following terms;
 - i. The applicants are jointly allowed to adopt baby MA who shall henceforth be known as JWM .
 - ii. The Registrar- General is directed to enter this adoption in the Adopted Children Register.
 - iii. That FNM is appointed as the child’s legal guardian in the event of the death or incapacity of the applicants before the child attains the age of majority and is self-reliant.
 - iv. The guardian ad litem is hereby discharged.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG’A THIS 12TH DAY OF JUNE, 2024.

C.W. GITHUA

JUDGE

In the presence of :

The 2nd Applicant

Ms. Susan Waiganjo Court Assistant

1st Applicant Absent

