



**In re N (Minor) (Adoption Cause E021 of 2022)  
[2024] KEHC 8484 (KLR) (12 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8484 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E021 OF 2022**

**G MUTAI, J**

**JULY 12, 2024**

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF  
BABY N (A MINOR) BY MAA AND BAM (THE JOINT APPLICANTS)**

**IN THE MATTER OF**

**MAA ..... 1<sup>ST</sup> APPLICANT  
BAM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

**Introduction**

1. The Joint Applicants herein filed the Originating Summons dated 6<sup>th</sup> October 2022 on 25th October 2022. Vide the said Summons, they seek the following orders:-
  1. That the Director of Children Services be ordered to conduct investigations as to the suitability of the Applicants to adopt Baby N;
  2. That the Applicants be authorized to adopt Baby N, a minor;
  3. That the records at the Registrar of Births and Deaths be rectified and the minor herein be issued with a birth certificate in the name of N MAA;
  4. That the Registrar General be ordered to make appropriate entries in the Adopted Children’s Register in respect of N MAA; and
  5. That N MAA be deemed a Kenyan citizen by birth and be issued with a Kenyan passport.

**The Proposed Adoptive Parents**

2. In the statement in support of the Application, the Joint Applicants stated that they were both Kenyan citizens by birth, aged 55 and 45, respectively, at the time the Originating Summons were filed. They got married in 2002 and have no children of their own. The 1<sup>st</sup> Applicant is a prison officer, while the 2<sup>nd</sup>



Applicant is a housewife and a small-scale businesswoman. The child, the subject of these proceedings, was received into their care and attention and has lived with them since 23<sup>rd</sup> November 2018.

3. They stated that over the time the minor has been with them, they have developed strong emotional ties with her and look after her as if she were their biological child. They pleaded that if the application is allowed, they propose to rename her N MAA. They averred that they have sufficient income from employment and small-scale businesses to take care of the child. The Joint Applicants further averred that they had been vetted by the Child Welfare Society of Kenya and found fit to adopt. The child, on the other hand, had been declared free for adoption.

### **The Child**

4. The minor herein is presumed to have been born on 24<sup>th</sup> June 2017. She was found abandoned near a grocery stall in the Flats area of Likoni on 25<sup>th</sup> June 2017 by Mr Philip Nakuru Igumba. The incident was reported at Likoni Police Station and was booked under OB NO 51/25/06/2017. The baby was under the care of Good Samaritans until 27<sup>th</sup> June 2017, when she was placed at the Child Welfare Society of Kenya Mji wa Salama Temporary Place of Safety for temporary care and protection as investigations were being carried out. She was committed to the Child Welfare Society of Kenya Mji wa Salama Temporary Place of Safety on 18<sup>th</sup> August 2017 vide a committal order issued by the Court in Care & Protection Cause No. 438 of 2017.
5. Investigations conducted by the Likoni Police Station have not been successful. No one has claimed the child. Efforts to trace the child's parents to reunify the child with them have not been successful. The Child Welfare Society of Kenya made further attempts to trace the child's parents through newspaper advertisements in the Sunday Nation editions of 24<sup>th</sup> September, 5<sup>th</sup> November, and 24<sup>th</sup> December 2017. Despite these efforts, the child has remained unclaimed.
6. Having not succeeded in tracing the child's parents, the Child Welfare Society of Kenya concluded on 6<sup>th</sup> June 2023 that the "child is in need of an alternative family care" in a report declaring the child available for adoption.
7. The Certificate of Declaring a Child Free for Adoption was issued by the Child Welfare Society of Kenya on 21<sup>st</sup> October 2018 and has serial Number 1052.

### **Appointment of the guardian-ad-litem**

8. The Joint Applicants filed, together with Originating Summons, a Chamber Summons application dated 6<sup>th</sup> October 2022 vide which they sought, inter alia, to have Zani Omari of Kwale appointed as guardian ad litem in respect of this adoption cause.
9. The application was heard in open Court on 15<sup>th</sup> February 2023. Ms Zani Omari testified. Upon hearing her and being convinced of her suitability, I appointed her as a guardian ad litem and directed her to file her report within 14 days. I also made orders directing the Director of Children Services, through the Children's Department, Mombasa, to carry out a social enquiry and prepare and file the relevant report within 14 days.

### **Evidence Adduced by the Witnesses**

10. This matter was heard on 28<sup>th</sup> June, 2023, 8<sup>th</sup> November, 2023, 17<sup>th</sup> April and 3<sup>rd</sup> July, 2024. I will set out the evidence of the six witnesses who appeared before me below.
11. The first Witness was the 1<sup>st</sup> Applicant, Mr MAA. He works for the Kenya Prison Service and is based at Shimo la Tewa Medium Prison. He prayed that he be allowed to adopt the child with his wife.



12. The second witness was BAM. Ms Mwamrezi is the 2<sup>nd</sup> Applicant and the wife of the 1<sup>st</sup> Applicant. The couple resides in Likoni within Mombasa County. The 2<sup>nd</sup> Applicant is a Business lady. She prayed that they be allowed to adopt the child. Ms Mwamrezi testified that the couple had lived together for 20 years and had no children. She further testified that she knew the child would have all rights, including to education, healthcare, and inheritance.
13. Ms MAM was the third witness. She is the sister of the 2<sup>nd</sup> Applicant and, like her, resides in Likoni. The witness testified that she had been proposed as the legal guardian and stated that she was ready to be one.
14. Mr Francis Ndeleko Mwashumbe was the fourth Witness. He works for the Child Welfare Society of Kenya as a Programs Officer. He testified that the child was found abandoned. His organization prepared a report dated 6<sup>th</sup> June 2023. He stated that the Joint Applicants were suitable adoptive parents and confirmed that they had a good home environment.
15. The guardian-ad-litem was the fifth Witness. She testified that he was previously a colleague of the 1<sup>st</sup> Applicant in Mombasa Prison and knew his wife. He testified that he visited their home and prepared a report. Ms Zani Omari stated that the child was receiving good care and that he did not see anything problematic. The guardian-ad-litem recommended that the Joint Applicants be allowed to adopt the child.
16. The last witness was Ms Louisa Kemuma. Ms Kemuma works as a Children's Officer in the Department of Children Services, Mombasa. She testified that her office conducted a home visit on 22<sup>nd</sup> April 2024 and thereafter prepared a report dated 10<sup>th</sup> June 2024. She stated that they found that the child had bonded well with the proposed adoptive parents. The child had been with the Joint Applicants for five years and six months and was thriving. Ms. Kemuma recommended that the adoption application be allowed.

### **Analysis and Determination**

17. I have considered the application herein, the documents supporting it, and the evidence of the various witnesses. The issues that emerge for determination are whether the child is available for adoption, whether the Applicant is fit to adopt the baby, and, most importantly, whether the adoption is in the best interest of the child.
18. I have already set out the circumstances under which the child was found. The child was abandoned shortly after birth by an unknown birth mother. 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 under 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.”
19. Regarding the baby’s nationality, the evidence adduced shows that he was found abandoned shortly after 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.



20. 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.
21. Concerning the Joint Applicants' suitability, they are both Kenyan citizens by birth aged 57 and 47 years old at the time of this judgment, which ages 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 understand the consequences of adoption and know that once an adoption order is made, it is permanent.
22. Consequently, I do not doubt that they meet 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.”
23. 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.
24. 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.”
25. The child herein was found abandoned. She, therefore, needs basic necessities like food, shelter, education and clothing. She 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**

26. In my view, the Originating Summons has merit. Consequently, I issue the following orders: -
  1. I declare the child Baby N, a Kenyan citizen by birth;
  2. I dispense with the consent of the biological parents to the adoption as Baby N was abandoned at birth;



3. I authorize MAA and BAM to adopt Baby N;
  4. I declare that Baby N shall henceforth be known as N MAA;
  5. I appoint Ms MAM as the legal guardian of N MAA and entrust her with the responsibility of taking care of N MAA if the Joint Applicants become deceased or are otherwise permanently unable to take care of her before she attains the age of majority; and
  6. I direct the Registrar General to make an entry recording the adoption order made herein and the date of birth of N MAA as being 24<sup>th</sup> June 2017 in the Adopted Children Registrar as provided for by section 201 of the [Children Act, 2022](#).
27. I make no orders as to costs as this is a non-contentious adoption cause.

It is so ordered.

**DATED AND SIGNED AT MOMBASA THIS 12<sup>TH</sup> DAY OF JULY 2024. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Mr Obara, for the Joint Applicants; and

Arthur - Court Assistant.

