



**In re Unknown African alias BK (The Child) (Adoption Cause E002 of 2024) [2024] KEHC 8532 (KLR) (12 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8532 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E002 OF 2024**

**G MUTAI, J**

**JULY 12, 2024**

**IN THE MATTER OF THE CHILDREN ACT, 2022**

**AND**

**IN THE MATTER OF UNKNOWN AFRICAN ALIAS BEN BAKARI (THE CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF UNKNOWN AFRICAN ALIAS BEN BAKARI BY DIXON NYAMBU MWASAWA AND**

**PURITY JOY BERUBE (THE JOINT APPLICANTS)**

**BETWEEN**

**BETWEEN**

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

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

**AND**

**LITTLE ANGELS NETWORK ..... RESPONDENT**

**JUDGMENT**

Introduction

1. The Originating Summons before me is dated 29<sup>th</sup> January 2024. Vide the said Summons, the Joint Applicants seek the following orders:-

1. Pursuant to Article 14(4) of the *Constitution* of Kenya, 2010 and Part II, Section 7(4) of the *Children Act*, 2022, this Honourable Court be pleased to declare the child, Unknown African alias BB a Kenya 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 requirements of the consent to the adoption as required by the provisions of Section 186 of the *Children Act, 2022*;
  3. The Applicants DNM and PJB be authorized to adopt Unknown African alias BB;
  4. Upon the making of the adoption order, the child to be known as BFBN;
  5. Upon the making of the adoption order, ANM and JM be appointed Legal Guardians of the child as provided for by the provisions of section 188 of the *Children Act, 2022*; and
  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 a 18<sup>th</sup> May 2020 in the Adopted Children Register as provided for by section 201 of the *Children Act, 2022*.
2. The Joint Applicants filed a Chamber Summons application of even date together with the Originating Summons, vide which they sought to have Mr Samuel Mwanyumba Mwanjala of Taita Taveta appointed as a guardian-ad-litem.

### **The Joint Applicant**

3. DNM and PJB are Kenyan citizens, both of sound minds born in 1967 and 1971, respectively. They got married on 15<sup>th</sup> November 2008 at ACK Shagha Church in Taita Taveta County. They are of the African race and profess the Christian religion. The Joint Applicants are said to be financially stable and have no criminal record.
4. DNM has one adult son, CJN, from a previous relationship. They received the child, the subject of these adoption proceedings, on 21<sup>st</sup> May 2023, upon entering into a Foster Care Agreement with Baby Life Rescue Center Trust. They propose to rename the child BFBN if the instant adoption application is allowed. The Joint Applicants are not related to the child.
5. They averred that the application has the support of their family and that they can take care of the child.
6. In support of their application, they attached copies of various documents, including the Care & Protection Order, their identification documents, marriage certificate, the birth certificate of the 1<sup>st</sup> Applicant's biological child, consent to the adoption by the said biological child, Foster Care Agreement between the Joint Applicants and Baby Life Rescue Center Trust, Certificate Declaring a Child Free for Adoption, the Report to Declare a Child Free for Adoption, under section 184(1) of the *Children Act, 2022*, Police Clearances and other documents that I have perused and taken into consideration.

### **The Adoptive Child**

7. The Unknown African alias BB is estimated to have been born on 8<sup>th</sup> May 2020. He was found abandoned outside a hotel by a lady called Zubeda Omar, who took him to Coast General Hospital for a medical checkup. The matter was reported at Nyali Police Station and booked in the occurrence Book under entry number OB/6/20/2020. The child was initially admitted to the said hospital and was discharged and admitted to Baby Life Rescue Centre on 1<sup>st</sup> July 2020.
8. The Hon Magistrate committed the child to Baby Life Rescue Centre vide Care and Protection Cause No. 107 of 2020 on 8<sup>th</sup> June 2020. The child was committed under the same Care and Protection Cause No. 107 of 2020 with 4 other children. His IP number was 686324.



9. Attempts to trace his biological parents have not been successful. No one has come forward to claim. In the Report to Declare a Child Free for Adoption the Little Angels Network stated that it was impossible to trace his biological family and that the police had exhausted investigations. In their view, the child needs alternative family care and hence recommended adoption.
10. The Certificate of Declaring a Child Free for Adoption is serial number 002346 and was issued by the Little Angels Network.

### **Appointment of a Guardian ad litem**

11. As earlier stated, the Joint Applicants filed a Chamber Summons dated 29th January 2024 vide which they sought to have Samson Mwanyumba Mwanjala of Taita Taveta appointed as a guardian-ad-litem in respect of this adoption cause. Mr. Mwanjala is 42 years old and is married to Jacinta Wakio Tony. They have three children together.
12. I heard the Chamber Summons on 4th March 2024 in open Court. Being satisfied with his suitability, I appointed him as a guardian-ad-litem and directed him to prepare the statutory report in terms of Rule 9 of the Adoption Rules and to submit the same to the Deputy Registrar of this Court within 30 days of the date thereof. I also ordered the County Director of Children's Services to file the requisite report within the same period of time. I fixed the matter for hearing of the main cause on 3<sup>rd</sup> April 2024.

### **Evidence of the Witnesses**

13. The main suit was heard on 9<sup>th</sup> May and 24<sup>th</sup> June 2024. I shall produce a precis of their oral evidence below.
14. The first witness was Mr Mbitio Mvurya. Mr Mvurya is a Children's Officer in Taita Taveta County. He testified that his office conducted a social enquiry and that he visited the Joint Applicants' home on 18<sup>th</sup> April 2024. He found the home suitable and recommended adoption by the Applicants.
15. Mr Joshua Mwalimu Wambua was the second witness. Mr Wambua is a social worker with the Little Angels Network, the adoption agency involved in these proceedings. He testified that they approved the applications and also issued the certificate declaring the child free for adoption. The said certificate has serial number 002346 and was dated 8<sup>th</sup> June 2022. Mr. Wambua recommended the adoption.
16. The 1<sup>st</sup> Joint Applicant, Mr. DNM was the third witness. He testified that he resided in Nyache in Taita Taveta and used to work for Kenya Pipeline. He stated that although he had a child from a previous relationship, he had no child with the 2<sup>nd</sup> Applicant. He further stated that he knew that adoption is permanent and that the child will have the right to inherit his property. He averred that the family, including his son, were supportive. Mr. Mwasawa said that if the adoption is allowed, they would rename the child BFBN and let him know that he was adopted at an appropriate time.
17. Ms PJB was the fourth witness. She is a business lady and resides in Nyache with her husband. She has no biological child of her own. She testified that she is aware that adoption is permanent and that the child will have the right to inherit their property. She averred that they intended to bring up the child as a Christian.
18. Samson Mwanyumba Mwanjala, the fifth witness, is the guardian ad litem. He stated that he visited the joint Applicants five times. He observed that the child was in good health and well-fed, and he was confident that the Joint Applicants would take care of him well.



19. The last witness was Collins Nyambu. Collins is the biological child of the 1<sup>st</sup> Joint Applicant. He stated that he had no objection to the adoption application and was aware that the child would have the right to inherit his parents' properties.
20. I have considered the application herein, the supporting documents and the evidence of the various witnesses. The issues that emerge for determination are whether the child is available for adoption if the Joint Applicants are fit to adopt the baby, and, most importantly, whether the adoption is in the best of the child.
21. I have already set out the circumstances under which the child was found. The child was abandoned immediately after birth by the 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.”
22. Regarding the baby’s nationality, the evidence adduced shows that he was found abandoned immediately 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 unknown is presumed to be a Kenyan citizen by birth. Given this provision, the child herein is presumed to be a Kenyan citizen by birth.
23. 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.
24. Concerning the Joint Applicants’ suitability, they are Kenyan citizens aged 57 and 53 years old, respectively, at the time of this judgment, which places them within the age bracket of not less than 25 years nor more than 65 years for adoptive parents in compliance with Section 186(2) of the *Children Act*, 2022. From the records 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.
25. 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.”
26. 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.



27. 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.”

28. 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**

29. From the foregoing, it is clear that I have found merit in the Originating Summons. Consequently, I issue the following orders:-

1. I declare Unknown African alias BB (the child), a Kenyan citizen by birth;
2. I dispense with the consent of the biological parents to the adoption as Unknown African alias BB (the child) was abandoned at birth;
3. I authorize DNM and PJB to adopt Unknown African alias BB (the child);
4. I declare that Unknown African alias BB (the child) shall henceforth be known as BFBN;
5. I appoint ANM and JM as the Legal Guardians of BFBN and entrust them with the responsibility of taking care of BFBN if the Applicants become deceased or are otherwise permanently unable to take care of him until before he attains the age of majority;
6. I direct the Registrar General to make an entry recording the adoption order made herein and the date of birth of BFBN as being 18<sup>th</sup> May 2020 in the Adopted Children Register as provided for by section 201 of the *Children Act*, 2022; and
7. The guardian-ad-litem, Samson Mwanyumba Mwanjala, is hereby discharged forthwith.

30. I make no orders regarding costs as this is a non-contentious adoption cause.

It is so ordered.

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

**Gregory Mutai**

**JUDGE**

In the presence of: -

Ms Ngugi, for the Joint Applicants;



Arthur - Court Assistant

