



REPUBLIC OF KENYA



KENYA LAW
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**In re Baby C (Adoption Cause E020 of 2022)
[2023] KEHC 1159 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1159 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E020 OF 2022**

MW MUIGAI, J

FEBRUARY 16, 2023

IN THE MATTER OF

EMK 1ST APPLICANT

MNK 2ND APPLICANT

JUDGMENT

1. The Applicant, EMK - ID NO xxxx and MNK - ID NO xxxx('the Applicants') sought by their application to be allowed by this Court to adopt Baby C (hereafter 'the child').
2. Vide Originating Summons application dated October 12, 2022 the Applicants sought among other orders, the consent of the biological parents of Baby C be dispensed with since the child was abandoned after birth; that the Applicants be authorized to adopt baby C and the child shall be called IK; that the Court appoints CMM & AKN as the legal guardians of IK upon granting of the Adoption Order; that the Registrar general be ordered to make the appropriate entries in the adopted Childrens register in respect of IK; that IK be considered as a Kenyan citizen. The Applicants sought further orders that PMM be appointed as the child's Guardian Ad Litem and that the Director of Children's Department, Ministry of Gender, Children and Social Development investigate the Applicants' fitness to adopt and file a report; that the Applicants be authorized to adopt baby C and submit a report of their findings to the Court. PMM was appointed by this Court as Guardian ad Litem on November 14, 2022.
3. The child (C) who is the subject of the present adoption proceedings was presumably born on June 3, 2017. He was allegedly abandoned by the mother on the June 2, 2019 at a Good Samaritan's house at Indian Bazaar in Kiambu sub-county. The mother had sought shelter from rain at one IM and SO's house of Tel No xxxx where she excused herself to after the rain subsided to go withdrew money from a nearby Mpesa leaving the child behind but never came back for the child. This incident took place on the June 2, 2019. The matter was reported by I and her husband S to Kiambu Police Station OB No xx/03/2019. The child was then admitted at Limuru Children's Centre on the June 3, 2019 for Care and Protection as an abandoned child. The medical particulars of the child when entering home



showed that the minor was in stable condition having HIV tests non-reactive. The child was committed at Limuru Children's Centre by Kiambu Children's Court on June 4, 2019 for Care and Protection Case No 46 of 2019 for a period of six months which was later renewed on December 10, 2019 for a period of 3 years. The Good Samaritan by the name SO of Phone No xxxx was contacted on February 10, 2022 but it came out that the recipient/registered person of the Phone was not S but YR a resident of south Sudan hence chances of getting in touch with S became futile. The Kiambu Police Station in their final letter dated February 10, 2022 confirmed that no one placed a claim for the abandoned child and their effort to trace the child's kindred bore no fruits. The minor was freed for adoption by the Kenya Children's Home Adoption society's Case Committee on its sitting of February 16, 2022 vide Freeing Certificate Serial No xxxx.

The following documents were availed from Kenya Children's Home Adoption Society's for baby C.

1. Photo of the Applicants and the minor
 2. Initial letter from Kiambu Police Station
 3. Admission form
 4. Medical particulars of the child
 5. HIV test result
 6. Social inquiry report
 7. 1st committal order
 8. 2nd committal order
 9. Tracing report by KCH adoption society's personnel
 10. Final police letter
4. Pursuant to Section 156(1) of the *Children Act*, Kenya Children's Home, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicants. Another report in respect of the proposed adoption of the child by the Applicants was prepared by the Director of Children's Services, and this report was similarly in favor of the proposed adoption. The Guardian Ad Litem, PMM also filed the statutory report pursuant to Section 160(2) of the *Children Act* in which he noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
5. The Kenya Children's Homes Adoption Society filed their report on November 14, 2022. Mr Ndotono the Adoption Society Programme Officer appeared in Court on December 1, 2022 in respect of this Adoption. He stated that the child was declared Free for adoption by Kenya Children's Home Adoption Society in their Case Committee sitting of February 16, 2022. The Agency report contains family and professional background information of the Child's Adoptive Parents. According to the report the Applicants approached the Kenyan Children's Homes Adoption Society's office on February 25, 2021 with intention of being ratified for placement with a male child with a view to eventually adopting the child from any Charitable Children's Home within the Republic of Kenya. They were taken through the adoption process and its implications and took the application forms which they returned duly filled on July 13, 2021. An interview was conducted with the aim of assessing the suitability to adopt or otherwise in accordance to Section 177 (7) (b) of the Children's Act 2001.
6. The report provides that the applicants are Kenyan nationals; married for more than eighteen years and have attached marriage Certificate and have a biological daughter from second applicant in the name



- of CMM born October 4, 1995. They were approved to be suitable potential adoptive parents by the Society's case Committee sitting on the October 27, 2021 for placement with the Baby C. They were subsequently placed with the minor herein Baby C of Limuru Children's Centre on March 16, 2022 after a successful bonding at the said home. Prior to placement baby C was declared free for adoption by the Society's Case Committee sitting of February 16, 2022 where certificate of declaring the child free for Adoption Serial Number xxxx was issued in compliance to section 156(1) of the Children's Act 2001. Several updates on the general progress of the minor were made on April 22, 2022 and on May 13, 2022 which was concluded with a declaration interview on June 24, 2022.
7. The 2nd applicant has a daughter namely CMM from her first relationship who is now grown up. The Applicants got married on November 9, 2002 at Deliverance Church xxxx. The 1st Applicant parented the 2nd Applicant's daughter who is now grown up and already married and built their residential home in the village. They have stayed together for eighteen years in their marriage. The 2nd applicant's biological daughter is aware of her parents adopting the minor and has consented and is delighted to have a brother.
 8. The Applicants herein are adopting Baby C the child subject of these proceedings for their need to enlarge their family. The Applicants stay in Kangundo Town in an owner occupier house with water connection and they use solar for lighting where they have stayed since 2013. The 1st applicant earns a net salary of Kshs 21,000/- per month while the 2nd applicant engages in farming and gets a profit of Kshs 5000/- per month hence they are socially and economically endowed to care and cater for the child's needs. The minor has bonded well with the Applicants and their daughter and is comfortable under their care. The Applicants extended family are in support of the adoption and eagerly waiting for the child.
 9. The Director of Children Services through a Report dated November 30, 2022 in respect of the proposed adoption of the child by the Applicants was prepared by BN, Kangundo Sub County Children Officer. The report contains family and professional background information of the Child's Adoptive Parents. The Adoptive parents are a married couple with one daughter from the 2nd applicant called CM now grown up and married. The adoptive father is employed as a baker at Kenya Children's Homes earning a gross income of Kshs 21,000/- while the adoptive mother engages in farming and gets a profit of Kshs 5,000/- hence they are financially and economically capable to take care of the child. The family lives in Kangundo in an owner occupier house comprised of 3 bedrooms and a large sitting which has accommodated one set of sofa sets and a kitchen. The extended family is also in full support and eagerly waiting to receive the child. They recommend that the Applicants be allowed to adopt the minor.
 10. The Guardian ad Litem, PMM filed his Report dated November 28, 2022 in support of these Adoption proceedings. He stated that he has known the applicants for period of over 30 years and that the family is good and values peace and unity; they are God fearing people. He stated that the applicants have been loving and caring parents to the child and have always ensured that the boy is well taken care of. The Applicants have bonded well with the child as if born by the applicants. The Guardian Ad litem recommended the adoption.
 11. The Legal Guardians AKN and CMM filed their letters of consent dated October 12, 2022. They said in the document stated that they understand that as the legal guardian they expected to take over parental responsibility over the minor in case of any eventuality of the Applicants or total incapacitation and disability. They recommended the adoption.
 12. All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the adoption of the child. This Court has



evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.

13. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children's Services established that the Applicants are financially and socially stable and have emotional capability to provide for the upkeep and education of the child and give parental care. 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. The child considers the Applicants to be his parents.

Disposition

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application.
2. The Applicants, EMK and MNK are hereby allowed to adopt Baby C. Henceforth, the child shall be known as IK.
3. The child's date of birth is June 3, 2017 and the place of birth shall be Kiambu County.
4. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
5. AKN and CMM shall be the legal guardians of the child should such eventuality arise.
6. This Court directs the Registrar General to duly enter this order in the Adoption Register.
7. That the Director of Children to carry out supervision on the said adoption and file a report on the ongoing safety/security within one year of the Adoption as stipulated under Section 8 of the Children's Act 2022.
8. The Guardian ad litem is hereby discharged.

It is so ordered.

DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 16TH DAY OF FEBRUARY, 2023(PHYSICAL/VIRTUAL CONFERENCE).

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF:

THE APPLICANTS – PRESENT

GEOFFREY/PATRICK /COURT ASSISTANT(S)

