



**In re M aka FK (Baby) (Adoption Cause E017 of 2022)
[2023] KEHC 1162 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1162 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E017 OF 2022
MW MUIGAI, J
FEBRUARY 16, 2023
IN THE MATTER OF CHILDREN ACT 2001
AND
IN THE MATTER OF BABY M AKA FK**

IN THE MATTER OF

**DMN 1ST APPLICANT
JNK 2ND APPLICANT**

JUDGMENT

1. The Applicant, DMN – ID. NO. 11xxxxx and JNK ID. NO. 11xxxx (“the Applicants”) sought by their application to be allowed by this Court to adopt Baby FK (hereafter “the child”).
2. Vide Originating Summons application dated 13th day of October, 2022 the Applicants sought among other orders, the requirements of section 186 (8) (a) of the [Children’s Act 2022](#) be waived as provided for under section 187 (1) of the Act; that the Applicants be authorized to adopt baby FK and the child be known as SMM; that the Court appoints DMK & EMM as the legal guardians of the child; that the Director of Children’s Department to investigate the case and file a report; that the Registrar General be ordered to make in the adopted Children’s register and entry recording the adoption in accordance with the particulars set out in the schedule attached hereto.
3. The child (FK) who is the subject of the present adoption proceedings was presumably born on November 18, 2020 . He was allegedly abandoned by the mother at Machakos Level 5 Hospital, Machakos County after delivery. The matter was reported to Machakos Police Station under OB 27/03/12/2020 dated July 30, 2021. On December 8, 2020 the infant was placed under the care of Village of Hope Children’s Home following a court order issued on February 18, 2020 in Machakos, Protection and Care Case No. xxxx of 2020. A final Police letter issued on October 22, 2021 indicating that nobody had claimed the child since he was rescued and efforts to trace his mother or kindred had



- been unfruitful. The minor was freed for adoption by the Buckner Kenya Adoption Services Case Committee on April 27, 2022 vide a Certificate declaring a child free for adoption Serial No. 07xxxx.
4. The following documents were availed from Buckner Kenya Adoption Services for baby FK .
 1. Declaration report of the prospective adoptive parents
 2. certificate declaring a child free for adoption
 3. Cover letter
 5. Pursuant to Section 156(1) of the *Children Act*, Buckner Kenya Adoption Services, 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*, Benjamin Mbithi Kisenge also filed the statutory report in which he noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
 6. The Buckner Kenya Adoption Services filed their report on February 7, 2022. Ms. Irene Oguttu the Adoption Society Programme Officer appeared in Court on February 8, 2023 in respect of this Adoption. She stated that the child was declared Free for adoption by Buckner Kenya Adoption Services on April 27, 2022. The Agency report contains family and professional background information of the Child’s Adoptive Parents. According to the report the Applicants made and adoption application to Buckner Kenya Adoption Services on January 17, 2022 and it was their 1st adoption. The Applicants were taken through the relevant interviews, a home assessment was carried out as well as the pre –placement counselling. The Applicants were found eligible and a Case Committee sitting on April 27, 2022 approved their application. Baby FK was placed with the Applicants on 5th of May 2022. Prior to the placement baby FK was declared free for adoption by the society’s case committee on April 27, 2022 where a freeing certificate Serial Number 0572 was issued in compliance to section 156(1) of the *Children’s Act 2001* and Adoption Regulations, Kenya Gazette supplement No. 37.
 7. The Applicants have no biological child. The applicants were married on December 13, 2008. The Prospective adoptive father has from 2015 to date been a pastor and a farmer earning a gross income of Kshs 10,600. The Prospective adoptive Mother earns a gross salary of Kshs. 10,000. The Applicants herein are adopting Baby FK , the child subject of these proceedings for their love of children. It is their desire to adopt and further, serving in the Ministry has motivated them to help a needy child and give him a place to call home. The Applicants stay in Machakos, [Particulars withheld] in an owner occupier house. It is a rural setting comprising of two bedrooms and sitting room. There is a detached kitchen and store. They have two pit latrines and two bathrooms and they incur an electricity bill of Khs 475. They harvest rain water and also use borehole water. They also farm and according to the home assessment, the applicant’s home and surrounding environment was conducive for a growing child hence the Applicants are socially and economically endowed to care and cater for the child’s needs.
 8. The Director of Children Services through a Report dated February 6, 2023 in respect of the proposed adoption of the child by the Applicants was prepared by Emily Kimanzi, Sub County Machakos Children Officer. The report contains family background information of the Child’s Adoptive Parents. The family lives in a three bedroomed brick house comprised of 3 bedrooms and use electricity for light and harvest rain water. They own two acres piece of land which they grow fruits, maize, beans and keep cows and poultry for sale and domestic use. They own 5 acres of land in Vota area of Machakos



town which they farm maize, beans and cassava. The extended family is also in full support and eagerly waiting to receive the child.

9. The Guardian ad Litem, Benjamin Mbithi Kisenge filed his Report on 2nd day of January, 2023 in support of these Adoption proceedings. He stated that he has known the applicants for period of over 30 year he visited the family on three occasions and that the child had interacted well with other children and the parents. He stated that the applicants have ensured that the child has gotten all the immunization since January 2021 upto June 2022. The Applicants have bonded well with the child as if born by the applicants. The Guardian Ad litem recommended the adoption.
10. The Legal Guardians Antony Kimani Nyambura and Caroline Mbula Munyao filed their letters of consent dated October 13, 2022.
11. 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.
12. 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, DMN and JNK are hereby allowed to adopt Baby FK . Henceforth, the child shall be known as SMM .
3. The child's date of birth is November 18, 2020 and the place of birth shall be Machakos County.
4. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
5. DMK and EMM 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 Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security within one year of the Adoption in the best interest of the child Section 8 of [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

Patrick/geoffrey - Court Assistant(s)

