



**In re MO aka MM (Baby) (Adoption Cause E015 of 2022)
[2023] KEHC 1160 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E015 OF 2022**

MW MUIGAI, J

FEBRUARY 16, 2023

IN THE MATTER OF

ENJ APPLICANT

JUDGMENT

1. The applicant herein, ENJ of Id No. 298XXXX sought by her application to be allowed by this Court to adopt Baby MO (hereafter “the child”).
2. Vide Originating Summons application dated 21st day of September, 2022 the Applicant sought among other orders, that MW be appointed as the child’s Guardian Ad Litem, that the Director of Children’s Department, Ministry of Gender, Children and Social Development investigate the Applicant fitness to adopt and file a report; that the Applicant be authorized to adopt baby MO to be known as MMJ. MW was appointed by this Court as Guardian ad Litem on November 23, 2022.
3. The child (MO) who is the subject of the present adoption proceedings was presumed to born on March 16, 2014. The child is alleged to have been abandoned by unknown person at Nakhulo hotel in Funyula Town on August 16, 2015. The hotel owner Roselyn Taaka Odenyo of cell phone number 0720XXXX37 reported the matter at Funyula police station. She reported that an unknown person entered her hotel with a small boy whose name was unknown and was about two and a half years old. The person ordered food and left the boy eating. The said Roselyne took the child to Funyula Children’s office where she was advised to report the matter to the police station. The matter was reported at Funyula police station vide Occurrence book entry Number 16. Roselyne was then requested to stay with the child to give time if the parents could come. She took care of him for three days and then took the child to Busia Children’s Home, where he was placed in a Children’s home. The children Officer at Funyula placed the child at Busia Compassionate Children’s Home for five months. The child was committed at Strong Point Children’s Home for a period of three (3) years on March 7, 2019 vide protection and Care Case Number 27/2019 by the SPM’S Court in Mumias. On February 3, 2021 the police department furnished a final letter stating that no one had presented to claim the child. The Little Angels Network conducted further investigation on July 26, 2021 they contacted the



good Samaritan by the name Roselyne Taaak Odenyo who informed them that up to date, nobody has ever come to her hotel to claim the child. The Case Committee of Little Angels Network deliberated on this matter in a meeting held on August 4, 2021 and was satisfied that the child in this matter MO is available for adoption and further that adoption would be in the child's best interest. Baby MO was declared free for adoption vide Certificate of Declaration No.002191.

4. The following documents were availed from Little Angels Network Society's for baby MO. Child declaration certificate bearing series number 002191 dated 4/08/2021 Birth certificate of baby MO serial no. 003XXX68 Initial letter from Funyula Police Station dated 6/08/2015 Sub County children Officer's placement letter of 13/01/2016 Sub county Children Officers transfer letter of 13/01/2016 Admittance Form to the home dated 13/01/2016 Final letter from Funyula Police Station dated 6/06/2018 Sub-county children officer's report dated 7/03/2019 Court committal dated 7/03/2019 Protection & Care Case No.27/2019. Good Samaritan's letter of 3/02/2021 Sub county Children Officer's placement letter dated 3/2/2021 final police letter dated 3/02/2021 Medical report dated 8/02/2022 Care agreement form pre-placement report
5. Pursuant to section 156(1) of the Children Act, Little Angels Network, the relevant Adoption Society, prepared and filed in court a favorable report in respect of the proposed adoption of the child by the applicant. Another report in respect of the proposed adoption of the child by the Applicant was prepared by the Director of Children's Services, and this report was similarly in favor of the proposed adoption. The Guardian Ad Litem, MW also filed the statutory report pursuant to section 160(2) of the Children's Act in which she noted that the proposed adoption of the child by the Applicant would be in the best interests of the child.
6. The Change Trust Adoption Society filed their report on April 30, 2021. The report contains family and professional background information of the Child's Adoptive Parent. According to the report the applicant approached Change Trust stating that she is motivated by the urge to experience parental care and love to a less fortunate child. The report further states that the applicant is 63 years and would like to adopt a male child aged between 4-6 years. An interview was conducted with the aim of assessing the suitability to adopt and it was evident that the applicant was very friendly, organized, neat and relaxed and answered all questions without hesitating. The said report is pursuant to section 177 (7) (b) of the Children's Act 2001 for adoption of the child subject of these proceedings baby MO.
7. The applicant has never been married and has no biological children due to medical condition that could not be corrected. The applicant herein is adopting a child named MO. Baby MO the child subject of these proceedings is the first child the applicant is planning to adopt. The applicant is socially and economically endowed to care and cater for the child's needs. The minor is at Applicant's home and considers the applicant his mother and is unwilling to leave her. The applicants extended family are in support of the adoption since they are aware that the applicant cannot sire her own biological child. The Adoption Society recommends the adoption.
8. On 15/12/2022 Ms Lizzie Agala a representative from Change Trust Adoption Agency appeared in Court. She stated that the Applicant was assessed in a Care Committee meeting on April 30, 2021 and recommended the applicant is free to adopt. They conducted the interview at the applicant's home and found that she is organized, neat and very relaxed. The Case Committee sitting on April 30, 2021 approved the Adoption of a male child age 3-5 years. They recommend the adoption.
9. The Director of Children Services through a Report dated 13/12/2022 in respect of the proposed adoption of the child by the applicant was prepared by Emily Kimanzi of Machakos Sub – County children's office. Emily Kimanzi appeared in court in respect of these adoption proceedings. The report contains family and professional background information of the Child's Adoptive Parent. The



Adoptive parent is not married and has no biological children due to medical condition that could not be corrected. The adoptive mother is in real estate business. Hence, she is financially and economically capable to take care of the child. The applicant lives in their home where she was born in Mugalla. She shares the one acre piece of land with her three brothers. She is planning to relocate to her land in the same area where she will build a home for the minor. She is currently taking care of her aged mother. The applicant owns one acre of land in Mugalla and two plots of 50 by 100 in the same area where she has constructed rental houses she raises her income from these houses. The extended family is also in full support of the adoption. They recommend that the applicants be allowed to adopt the minor.

10. The Guardian ad Litem, MW filed her Report dated 28th day of November, 2022 in support of these Adoption proceedings. She stated that the applicant is fully committed to her role as the minor's parent and that the applicant has ensured that the needs of the minor are well attended to by providing food, shelter accommodation as well as necessary parental support. She had visited the home of the applicants several times and observed that the child has good interaction with the applicant. She observed that applicant is a good parent to the minor and she is already taking good care of the said child. That the applicant has support from her extended family which has fully welcomed the minor as part of the family. The Guardian Ad litem recommended the adoption.
11. The Legal Guardian Christine Mwikali Ndambukifiled her letter of consent dated 21/09/2022. In the said document stated that she understood that as the Legal Guardian she is expected to take over parental responsibility over the minor in case of any eventuality She recommended the adoption.
- 12.

FINDINGS

This Court has evaluated the facts of this adoption. This is a local adoption. The Applicant has to fulfill all the legal requirements relative to the adoption of the child.

The new [Children Act](#) was passed in July 2022 and provides new/different parameters to be met in adoption proceedings. In the instant matter the following issues came up;

- a. The Social Inquiry & Home Study Report is by Change Trust; Medical Particulars of Prospective Adopters was by Buckner Kenya Services and the Report to Declare Child Free For Adoption is by Little Angels Network and no explanation was provided for 3 Adoption Agencies instead of 1 duly registered adoption society recommending that an adoption order to be made to the Applicant.
- b. The Certificate declaring the child free for adoption was not availed but only the Report and no explanation was presented on why the Certificate was not availed in Court.
- c. The letter from Funyula Police Station of 3/2/2021 indicates that a business lady Rosaline Taaka of Mobile 0720 172237 reported that she found the child aged 21/2 years in the hotel left by an unknown person and the child was taken to a Children Home.
- d. By a letter dated 6/6/2018, Funyula Station, wrote to Mumias Law Courts indicated the child was aged 6 years.
- e. The Report by Children Officer to the Court stated the date of birth 2014 and aged 5 years and the Sub – County Children Officer of Busia stated that she is was aged 3 years by a Report of 13/01/2016/8.
- f. There is no evidence of financial capability – Bank statement, Title Deed/allotment letter, incorporation of company/Business Entity.



- g. A letter from the Local administration where the applicant resides.
- h. Identification Documents of the Applicant – ID Copy, telephone contacts, business premises.

All these Reports are not in tandem on the age of the child and requires confirmation before completion of the adoption process.

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; subject to the pending issues being regularized and the pending documents availed through the DR MHC.

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

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF:

Nthiwa – for the Applicants

Geoffrey/Patrick - Court Assistant(s)

