



**In re Baby J (Adoption Cause 3 of 2022) [2023] KEHC 1788 (KLR) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1788 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MOMBASA**  
**ADOPTION CAUSE 3 OF 2022**  
**G MUTAI, J**  
**MARCH 3, 2023**  
**IN THE MATTER OF BABY J**  
**IN THE MATTER OF CHILDREN'S ACT NO. 8 OF 2001**  
**AND**  
**IN THE MATTER OF BABY J**  
**IN MATTER OF APPLICATION FOR ORDERS OF ADOPTION OF BABY J BY RBK AND LK**

**BETWEEN**

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

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

**AND**

**CHILD WELFARE SOCIETY OF KENYA ..... RESPONDENT**

**JUDGMENT**

1. By Originating Summons dated March 8, 2022, brought under Section 154, 156, 157, 158, 160, 169 and 170 of the Children's Act, 2001 and Sections 1A, 1B and 3A of the *Civil Procedure Act* the Joint Applicants herein RBK and LK (hereafter "the Joint Applicants"), moved this court for orders that: -
  - a. PM Muthengi of Likoni, Mombasa be appointed Guardian-ad-litem in this case;
  - b. The Children Officer, Children Department, Jomvu Sub-County to write a report;
  - c. RBK and LK be authorized to adopt Baby J, the minor child;
  - d. Baby J be declared as a Kenyan citizen;
  - e. The name of Baby J to change to JKK;



- f. The Register General be directed to enter the name of the child in the Adopted Children Register in the prescribed form and to issue a certificate to that effect;
  - g. RCB be appointed as the legal guardian;
  - h. The honorable court be pleased to make any other orders it deems fit and appropriate; and
  - i. Costs of the Summons be in the cause.
2. The said Originating Summons is supported by the joint affidavit of the Joint Applicants, sworn sworn by them on March 8, 2022, in which they aver, inter alia, as follows: -
    - a. They are both citizens of Kenya by birth;
    - b. They are both mentally and physically fit;
    - c. They both live together in [Particulars withheld], Mombasa County; and
    - d. The 1<sup>st</sup> Applicant works at the [Particulars withheld] as a Security officer while the 2<sup>nd</sup> applicant is a housewife.
  3. The National ID card of the 1<sup>st</sup> Applicant indicates that he was born in 1962 in Koibatek, Baringo County. That of the 2<sup>nd</sup> Applicant states that she was born on April 14, 1969 in Baringo. By dint of the said documents the 1<sup>st</sup> Applicant is 61 years old while the 2<sup>nd</sup> Applicant is a few weeks shy of being 54 years old. They are therefore both above 25 and below 65 years of age. The Marriage Certificate No xxxx, which the Joint Applicants produced indicates that they got married on 31<sup>st</sup> August, 1991 at Kiplongon in Baringo County, in an African Inland Church, under the provisions of the African Christian Marriage and Divorce Act (now repealed). As evidence of their good standing the Joint Applicants produced Certificates of Good Conduct from the Department of Criminals Investigations.
  4. The Joint Applicants do not have children of their own due to health grounds. They however desire to make their marriage complete by adopting a child. They testified that they are in a happy marriage and are committed to each other, the inability to bear children notwithstanding.
  5. Regarding the subject child Baby J was found abandoned at Sector Mugunda, Mowlem Area, Nairobi County on October 6, 2014. At the time he was found he was approximately 1-year-old.
  6. Officers at Mowlem Police Post, contacted the Child Welfare Society of Kenya, for purpose of rescuing and according Baby J a temporary place of safety. Baby J was rescued and placed with CWSK Mama Ngina Kenyatta Temporally Place of Safety, where he remained until November 11, 2014 when he was transferred to CWSK Mji wa Salama Temporary Place of Safety. Baby J was committed to the care and protection to the said place on January 13, 2015 as per a Committal Order which was availed to this Court.
  7. Attempts to trace the parent(s) of Baby J through print media were unsuccessful. A certificate was issued by the Child Welfare Society of Kenya that Baby J was free for adoption on September 4, 2017 vide a Certificate No xxxx. This certificate was availed to this Court.
  8. Baby J remained under the custody of CWSK until he was placed with the Joint Applicants on September 15, 2017 where he has been to date.
  9. This Adoption Cause came up for the hearing of the application for appointment of guardian-ad-litem on July 13, 2022. Upon a viva voce hearing, and after assessing her the suitability, Ms Patricia Mueni Muthengi was appointed as a guardian-ad-litem and ordered to prepare the necessary report within 30 days.



10. The court also ordered the Director Children Services to file Social Enquiry Report within a similar period. The said reports are in the Court file.
11. The Hearing of the main Originating Summons application was fixed for September 28, 2022. It wasn't heard on the said date and was adjourned. I heard the matter on February 23, 2023 when 5 witnesses testified.
12. Pursuant to the directions of the Court, referred to earlier the Director Children Services through the Country Children's Coordinator, Mombasa County filed a report on February 16, 2023. The Guardian-ad-litem filed her report on September 1, 2022 vide which she recommended the adoption of Baby J by the Joint Applicants. The report by the Adoption Society is dated December 6, 2021 was filed together with the Originating Summons on May 4, 2022. All the reports, except that of the County Children Coordinator, recommended adoption of the subject child by the Joint Applicants.
13. The Applicants pleaded with me to allow them to adopt Baby J. They confirmed that they understood the consequences of the adoption process. They testified that they had bonded well with him and that he called them father and mother respectively. They testified that Baby J would be brought up as a Christian by loving adoptive parents who are ready to guide him as he grows up. The Joint Applicants propose to call him JKK if the adoption proceedings are successful. They testified that they wished to have the adoption proceedings completed as soon as possible so that Baby J can be registered for the Competency Based Curriculum with the new birth certificate they would obtain if they are allowed to adopt him.
14. The Guardian-ad-litem, Patricia Mueni Muthengi, produced her report vide which she recommended adoption by the Joint Applicants. She testified that she had visited the home of the Joint Applicants on several occasions. Her findings were that the Joint Applicants have a good home and that Baby J had bonded with and was happy staying with them.
15. Francis Ndeleko Mwashumbe a social worker with the Child Welfare Society of Kenya, in similar vein recommended the adoption of Baby J by the Joint Applicants. He testified that the Child Welfare Society of Kenya is a national adoption agency.
16. Although the County Children Coordinator, in his report dated February 21, 2023, was of the opinion that the Joint Applicants met the legal requirements as per section 186 of the *Children's Act, 2022*, his reported faulted the documentation availed by the Child Welfare Society of Kenya. Ms Njeri Mwangi who testified on his behalf stated that the Child Welfare Society of Kenya wasn't a registered adoption society. Consequently, it was recommended that this Court issues a guardianship order in lieu of adoption.
17. What then are the issues that call for determination by this honourable court? In my opinion they are as follows: -
  - a. Whether Baby J is qualified to be adopted;
  - b. Whether the Joint Applicants are suitable to adopt Baby J and; and
  - c. Whether, the adoption is in the best interest of Baby J.
18. As indicated by the report of the Child Welfare Society of Kenya Baby J was abandoned by his biological parents. Attempts to trace them have failed to bear fruits. Consequently, he was declared free for adoption and placed with the Joint Applicants. As an abandoned child there was no one to give the consent required under section 186(8) of the *Children Act, 2022*. That being the case I dispensed with



the consent required under the aforesaid section of the Act in exercise of my power under section 187(1) of the Children Act, 2022.

19. Regarding the adoptive parents' suitability, they are both aged above 25 and below 65 years which is the legally recognized age bracket for the adoptive parents pursuant to Section 186 of the Children Act, 2022. They each are 21 years older than Baby J.
20. The child has fully bonded with the adoptive parents. During the hearing I noticed how close he was with them. I had an opportunity of asking him questions. He told the Court that he had been to their home in Mumberes in Baringo County. He seemed really happy and contented.
21. The Joint Applicants appear to be financially stable. Although the 1<sup>st</sup> Applicant is now retired he is engaged in farming and other gainful activities that have regular sustainable incomes. They have a good home in their own compound in Miritini. Baby J appears to be well provided for and attends a private school. He also goes to church regularly. I have no doubt the Joint Applicants are suitable to adopt him.
22. As to whether the adoption is in the best interest of the child, Article 53 (2) of the Constitution of Kenya, 2010 and section 8(2) of the Children Act, 2022 are clear. The two provisions do underscore the primacy of the best interest of a child as a factor to be considered when making any decision affecting a child.
23. I do not think that guardianship, as proposed by the County Children Coordinator would be in the best interest of the child. I have read all the reports that were filed herein. Contrary to what County Children Coordinator alleged the Child Welfare Society of Kenya is an adoption society. I have also seen a committal order issued by the Children's Court Tononoka.
24. The minor has fully bonded with the Joint Applicants. The only home Baby J knows is that of the Joint Applicants.
25. I find and hold that the adoption herein is in the best interests of Baby J 2. Accordingly, the Originating Summons is allowed with orders that: -
  - a. The applicants herein are authorized to adopt Baby J who henceforth shall be known as JKK.
  - b. Declaration is hereby made that Baby J is a Kenyan citizen by birth and that he was born on February 14<sup>th</sup> February, 2014.
  - c. The guardian-ad-litem is hereby discharged;
  - d. The Registrar General is directed to enter the name of the child in the Adopted Children Register in the Prescribed Form and to issue a certificate to that effect; and
  - e. RCB is appointed as the legal guardian.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 3<sup>RD</sup> DAY OF MARCH, 2023**

.....

**GREGORY MUTAI**

**JUDGE**

**In the Presence of:**

**Winnie – Court Assistant**

**Ms Mwashushe – Advocate for the Applicant**

