



JWN & another v Little Angels Network (Adoption Cause E009 of 2022) [2023] KEHC 18373 (KLR) (12 June 2023) (Judgment)

Neutral citation: [2023] KEHC 18373 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E009 OF 2022
G MUTAI, J
JUNE 12, 2023
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF ABANDONED BABY BOY ALIAS BABY A
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF
ABANDONED BABY BOY ALIAS BABY A BY JWN & JTR -THE JOINT APPLICANTS**

BETWEEN

JWN 1ST APPLICANT

JTR 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The joint applicants herein moved this honourable court vide originating summons dated June 6, 2022 seeking orders that;
 - a. Pursuant to article 14(4) of the Constitution of Kenya 2010 and section 11 of the Children Act, 2001, this honourable court be pleased to declare the child Abandoned Baby Boy Alias Baby A a Kenyan citizen by birth;
 - b. Pursuant to the provisions of section 159 of the Children Act, 2001 this honourable court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of section 158 of the Children Act, 2001;



- c. The applicants JWM and JTR be authorized to adopt Abandoned Baby Boy alias Baby A;
 - d. Upon the making of the adoption order, the child to be known as ABW;
 - e. Upon the making of the adoption order GG and AMA be appointed legal guardians of the child as provided for by the provisions of section 164 of the *Children Act*, 2001;
 - f. 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 as January 20, 2019 in the Adopted Children Register as provided for by section 170 of the *Children Act*, 2001; and
 - g. The costs of this application be costs in the cause.
2. The application is supported by the averments in the statement in support thereof sworn on February 8, 2022. The applicants are adult Kenyan citizens born in 1972 and 1978 respectively. They are married to each other and are not blessed with children of their own. The motivation to adopt the baby has been ignited by the desire to have children of their own to make their family complete hence this adoption proceeding. Regarding their occupation, the applicants are farmer and businesswoman respectively.
 3. Regarding the child estimated to be born on January 20, 2019. He was abandoned by his mother at a day care in Ngara on November 15, 2019. The day care owner DW reported the matter after five days at Pangani Police Station and the same was booked in the occurrence book as entry number XXXX/2019. The child was committed to the legal custody of Nest Children's Home by the Senior Resident Magistrate Children's Court Nairobi *vide* Care and protection number 52 of 2020.
 4. In its meeting held on March 3, 2021, the case committee of Little Angels Network declared the child free adoption and a certificate S/No 0xxx4 thereof issued.
 5. Upon instituting these proceedings, LWM was on March 23, 2023 appointed guardian *ad litem*. The County Director of Children Services through the Children Department, Mombasa and the guardian *ad litem* were directed to file their respective social inquiry reports within 30 days.
 6. Preceding the hearing, the Director Children Services through the County Children Coordinator Mombasa County filed social inquiry report dated May 1, 2023 recommending the adoption. Equally the guardian *ad litem* filed her report dated May 17, 2023 recommending the adoption.
 7. During the hearing the applicants urged the court to allow the application to enable them adopt the baby and stated that they understood the consequences of adoption and that it is permanent.
 8. I have considered the application herein, materials in support and evidence by various witnesses and the issues that emerge for determination are; whether the baby is available for adoption, whether the applicants are fit to adopt the baby and most importantly whether the adoption is in the best of the child.
 9. The baby herein was born on January 20, 2019, he was abandoned by his mother at a day care in Ngara on November 15, 2019. The day care owner DW reported the matter after five days at Pangani Police Station and the same booked on occurrence book number 84/20/11/2019. The child was committed to the legal custody of Nest children's home by the Senior Resident Magistrate Children's Court Nairobi *vide* care and protection number 52 of 2020.
 10. The child was placed with the applicants on April 21, 2021 who have since played the role of a father and mother him and has been under their care since he was two years. Nobody has come forward to



claim the child and therefore the need for consent pursuant to section 158 and 159 is 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.”

11. Regarding the baby’s nationality, it is clear was found abandoned at Ngara within the Republic of Kenya. The *constitution* article 14(4) recognize that a child who is less than 8 years of age, and whose nationality and parents are not known, is presumed to be a Kenyan citizen by birth. In view of this provision the child herein is presumed to be Kenyan citizen by birth.
12. In terms of age the child is above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to section 156 of the *Children’s Act*. Further section 157 does recognize any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. I have no doubt the child is fit for adoption.
13. Concerning the applicants’ suitability, they are Kenyan citizens aged 51 and 45 years respectively which places them under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with section 158 of the *Children’s Act*. The applicants have been described as financially stable as both are farmer and businesswoman. They have been described as caring, loving and Christian couple with no criminal record. Since the placement of the minor into their custody the child has fully bonded. They also understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and admit they will treat the baby like their biological child.
14. Based on the foregoing I have no doubt that they have met the necessary 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 conceded view that weighing all factors and the evidence placed before me the applicants are of sufficient ability to bringing up the child and to furnish her with appropriate support and maintenance within their resource base available to them.”

15. 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* and section 8 of the *Children Act*, 2022 which underscores the best interests of a child principal as the primary consideration before making any decision concerning a baby.
16. The child herein was abandoned at a day care in Ngara. He needs basic necessities like food, shelter, education and clothing. She has fully integrated with the applicants. It is obviously in the best interests of the child that this adoption application be allowed. I am guided by the case *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 wellbeing of the child. As the *Constitution* and the law state, in all matters concerning a child, the best interests of the child are paramount.”

17. In allowing the application I am guided by the case of *In re JK* [2021] eKLR where the court stated,
“In light of all the foregoing, the court is of the view that the best interest of the child will be served by issuance of an order of her adoption to and by the applicants.”



18. The circumstances in of *In re JK* [2021] eKLR were similar to those of this case and the court allowed the application for adoption.
19. Accordingly, the application is allowed with orders that:
 - a. The child Abandoned Baby Boy Alias Baby A is hereby declared a Kenyan citizen by birth;
 - b. The consent of the biological parents to the adoption is hereby dispensed with;
 - c. JWN and JTR are hereby authorized to adopt Abandoned Baby Boy Alias Baby A who shall henceforth be known as ABW;
 - d. GG and AMA are hereby appointed legal guardians of the minor in the event the applicants are deceased or are otherwise unavailable;
 - e. The Registrar General is hereby directed to enter the adoption order made herein and the estimated date of birth of ABW as being January 20, 2019 in the Adopted Children's Register; and
 - f. The guardian *ad litem* is hereby discharged.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 12TH DAY OF JUNE 2023 VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Ms. Ngugi for the Joint Applicants

Ms. Gillian Mutamba – Court Assistant

