



**In re Baby EG alias MWI (Child) (Adoption Cause 18 of 2022)
[2023] KEHC 20567 (KLR) (21 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20567 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 18 OF 2022**

**G MUTAI, J
JULY 21, 2023**

IN THE MATTER OF BABY EG ALIAS BABY MWI (A CHILD)

AND

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF
BABY EG ALIAS BABY MWI BY KNM AND LWW (THE JOINT APPLICANTS)**

BETWEEN

BETWEEN

KNM 1ST APPLICANT

LWM 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The joint applicants herein moved this honourable court vide originating summons dated September 22, 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 baby EG Alias baby MWI 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 KNM and LWM be authorized to adopt baby EG Alias baby MWI a child;
 - d. Upon the making of the adoption order, the child to be known as MSM;



- e. Upon the making of the adoption order, MJM be appointed legal guardian of the child as provided for by the provisions of section 164 of the *Children Act*, 2001; and
 - 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 October 19, 2020 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 September 16, 2022. The applicants are adult Kenyan citizens born on March 13, 1956 and 1st May 1973 respectively. They are married to each other and not blessed with biological children of their own. They are the adoptive parents to BLM who was adopted on August 14, 2018. The motivation to adopt the baby has been ignited by the desire to have children of their own and also a sibling to the other child. Regarding their occupation, the 1st applicant is a businessman while the 2nd applicant is a senior clerical officer at the Kenya Ports Authority.
 3. Regarding the child estimated to be born on October 19, 2020. She was abandoned by her mother at her aunt's home in Umoja 3 on 19th October 2020. She was taken to Kenyatta National Hospital the same day after being referred from St. Teresa's Hospital Kiambu. Kenyatta Police Post issued an initial letter, booked vide Occurrence Book Number 09/16/04/2021, addressed to Charity Children's Home in reference to a child in need of care. The child was admitted to the House Of Charity Children's Home on 27th April 2021. The child was committed to the legal custody of the said children home by the Children's Court Nairobi vide Care and Protection Cause Number E538 of 2021.
 4. In a meeting held on 1st December 2021, the case committee of Little Angels Network declared the child free for adoption and a Certificate S/No.002xxxx was issued.
 5. The originating summons refers to the *Children Act*, 2001. The said Summons were filed on September 21, 2022. By then the *Children Act*, 2022 was already in force, having commenced on July 26, 2022. I will therefore make my decision based on the latter Act.
 6. This court appointed Irene Afande Murambi as the guardian-ad-litem on April 19, 2023. I directed the County Director of Children Services through the Children Department, Mombasa and guardian ad litem to file their respective social inquiry reports within 30 days.
 7. Preceding the hearing, the Director Children Services through the County Children Coordinator Mombasa County filed report dated June 21, 2023 recommending the adoption. Equally the guard-ad-litem filed her report on May 23, 2023 recommending the adoption.
 8. 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.
 9. 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.
 10. I have already set out in the preceding paragraphs of this judgment the circumstances under which the child was placed with the joint applicants. I need not rehash the same here. The child was placed with the applicants on December 29, 2021. They have been playing the role of a father and a mother to her since then. Nobody has come forward to claim the child and therefore the need for consent of the biological parent(s) pursuant to section 186(8) and 187 of the *Children Act*, 2022 is dispensed with.



11. Regarding the baby's nationality, it is clear she was abandoned at her aunt's place in Umoja 3 within the Republic of Kenya. Article 14(4) of the Constitution of Kenya, 2022 recognizes 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 184 (b) of the Children's Act, 2022. Further Section 185(1) of the said Act does recognize that 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 67 and 50 years respectively which places the 2nd applicant under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with section 186(2) of the Children's Act 2022. The fact that the 1st applicant is above the age bracket stipulated in the Children's Act was noted by the Director of Children's through the County Children's Coordinator, Mombasa County in her report and recommended the adoption, stating: -

“However, we also note that the male applicant is above the age of 65 years. Despite this fact, he seems to have bonded well with the child and seemingly have a close relationship. Seeing as the applicants also have another adopted child who is well cared for, this office sees no reason to deny the applicants the child in this matter due to age restrictions.”

14. Article 53(2) of the Constitution of Kenya, 2010 requires me to consider the best interest of a child when making a decision concerning her. Although the 1st applicant is slightly older, by 2 years, than the maximum age under the Children Act, 2022, rejecting the adoption application on the age ground alone will not be in the best interest of the child. The 2nd applicant is qualified. The applicants already have an adoptive child Brasen Levi Mutua. They appear to me to be a loving couple who are very committed to giving the child a home. I therefore find and hold that it is in the best interest of the child that the age requirement in respect of the 1st applicant is dispensed with.
15. The applicants have been described as financially stable as they are an businessman and an employee of [Particulars withheld] with an average income of Kes.100,000/- and Kes.150,000/- respectively. They also have assets and shares. They have been described as caring, loving, Christian couple with no criminal record. Since the placement of the minor into their custody the child has fully bonded with them. They also understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and commit they will treat the baby like their biological child.

Consequently, 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 considered 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 availed to them.”

16. 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 of Kenya, 2010 and section 8(1) and (2) of the Children's Act, 2022 which underscores the best interests of a child principal as the primary consideration before making any decision concerning a baby.
17. The child herein was abandoned. She 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 SSI (Baby)* [2021] eKLR where the court stated: -

“The child herein was surrendered willingly for adoption by her mother MMK. Like any other child she is in need of parental care and guidance. Besides, she needs basic necessities like food, shelter, education, and clothing. She has fully integrated with the applicant. It is obviously in the best interests of the child that this adoption application be allowed.”

18. Accordingly, the application is allowed with orders that:-

- a. The child is declared a Kenyan citizen by birth;
- b. The consent of biological parents or guardians is dispensed with;
- c. The applicants are authorized to adopt baby EG Alias baby MWI who shall henceforth be known as MSM;
- d. MJM is hereby appointed legal guardian of the minor effective in the event both joint applicants are deceased or otherwise unavailable before the child attains the age of majority;
- e. The Registrar General is directed to make an entry recording the adoption order made herein and the date of birth of the child as being October 19, 2019 in the Adopted Children’s Register; and
- f. The guardian-ad-litem is discharged.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 21ST DAY OF JULY 2023 VIA MICROSOFT TEAMS

GREGORY MUTAI

JUDGE

In the presence of: -

Ms. Muendo holding brief for Ms. Katsya for the Applicant;

Mr. Arthur Ranyundo – Court Assistant.

