



**In re MP alias W alias AB (Adoption Cause E005 of 2021)  
[2023] KEHC 20364 (KLR) (18 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20364 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
ADOPTION CAUSE E005 OF 2021  
RM MWONGO, J  
JULY 18, 2023**

**UNDER S 160(1) OF THE CHILDREN ACT 2001 LAWS OF KENYA  
IN THE MATTER OF ADOPTION OF BABY MP ALIAS BABY W ALIAS AB**

**IN THE MATTER OF**

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

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

**JUDGMENT**

**Background**

1. The applicants filed an originating summons dated 4<sup>th</sup> March, 2021 seeking orders, inter alia, that they be authorized to adopt the child, Baby MP alias Baby W, an abandoned baby. They seek that he be known as PMM. Further, they seek that the Registrar General be directed to enter this adoption into the Register of Adoptions; that the child be presumed to be a Kenyan citizen by birth and that the Director of Immigration be authorized to issue the child with a Kenyan passport.
2. The application is supported by the applicants' joint statement and on the following grounds:
  - i. That the applicants have met the legal prerequisites set out for adopting a child and have sufficiently bonded with the child for over three months.
  - ii. That the child has thrived under their care and identifies with the applicants as her parents.
  - iii. That it is in the best interest of the child that the adoption order be granted in favour of the applicants.



## **The Applicants**

3. The applicants in their statement dated 4<sup>th</sup> March, 2021 state that they have met the legal prerequisites set out for adopting a child and have sufficiently bonded with child, and that it is in the best interest of the child that the adoption order be granted in favour of the applicants.
4. The applicants state they are Kenyan citizens of sound mind. SM was born on 22<sup>nd</sup> December, 1971 while CW was born on 22<sup>nd</sup> April 1976. They have been married since 2005. They earn a living by operating their own businesses running a farm produce business and a school known as [Particulars Withheld]. They are in good health and financially stable considering that they have a stable income from the business they run. They are capable of providing for the child's needs in a comfortable and safe environment. They have never been charged with nor convicted of any criminal offence referred to in the Third Schedule of the Children's Act 2001.
5. The applicants have a happy marriage despite not having children. They decided to adopt a child out of the desire to provide the child with a family and love.
6. They have proposed PMW as the legal guardian of the child in the event of their death or incapacity before the child is of full age and fully self-reliant.

## **The child**

7. On 29<sup>th</sup> March, 2018, the child was found abandoned at [Particulars Withheld]. The public notified the Witeithie A.P Post of the abandoned child, and the police rescued the child. They filed a formal report of the abandonment and rescue of the child, which was recorded in occurrence book entry number xxxx at Juja Police Station. The police took the child to Thika level Five hospital for treatment. On 26<sup>th</sup> April 2018, the child was discharged from the hospital and was admitted at House of Charity Home in Nairobi.
8. On 12<sup>th</sup> October, 2018, the children's office through Protection & Care Case No. xxxx successfully applied to the children's court in Thika for committal of the child into the custody of House of Charity Children's Home, Nairobi.
9. The Juja Police Station confirmed that they had not managed to trace the biological parents of the child and no person or relative had claimed the child since he was rescued on 29<sup>th</sup> March, 2018.
10. The child's history was reviewed by Buckner Kenya Adoption Services which thereafter declared the child to be free for adoption. The applicants have had care and control of the child for more than the statutory three months, the child having been placed with the prospective adoptive parents on 22<sup>nd</sup> February, 2020. This is ascertained in the Children Officer Report dated 16<sup>th</sup> September, 2022.
11. The child's current name is PMM and he is 4 years 8 months old. He attends [particulars Withheld] Academy and his favourite game is racing tires and also playing with other children. The House of Charity Children's Home, Nairobi is aware of their application to the child and approves it.
12. The child's history was reviewed by Buckner Kenya Adoption Services Committee and declared free for adoption on 21<sup>st</sup> June, 2019 under a Certificate of Declaring a Child Free for Adoption, Serial Number xxxx issued in accordance to section 156(1) of the Children's Act 2001.

## **The Proceedings**

13. Having instituted adoption proceedings, the applicants vide Chamber Summons dated 4<sup>th</sup> March, 2021, sought the appointment of VWW as the legal guardian of the child in the event of the death



or incapacity of the applicants before she is of full age and fully self-reliant. The Court made the appointment by order dated 23<sup>rd</sup> November, 2021.

14. On 15<sup>th</sup> March, 2023 the court confirmed that the Guardian ad Litem report and the Children Department assessment and evaluation report had been filed. Both reports recommended this prospective adoption.
15. The Children Officer's Report, aforesaid, states that the Children's Department has no objection to the adoption as long as the adoption society files a signed certificate declaring the child free for adoption and a complete adoption committee report.
16. The only issue is whether the applicants should be authorized to adopt the child.

### **Analysis and Determination**

17. Having considered the application herein, affidavits in support together with the annexures thereof, I am satisfied that this is a local adoption given that the applicant is a Kenyan citizen. Section 181 (1) of the Children's Act, 2022 provides:

“ Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya.”

18. It is evident that the child is above six (6) weeks and below 18 years which is the requisite age bracket for a child to qualify for adoption (see Section 184 (1) of the Children's Act). He has been declared free for adoption and effectively placed under the care and control of the applicants for a continuous period of three (3) months pursuant to Section 184(1) of the Children's Act.
19. The adoption agency, Buckner Kenya Adoption Services, has offered the child for adoption hence, the baby is available for adoption.

### **Suitability of the applicants for adoption.**

20. The applicants are Kenyan citizen and adults aged below 65 years and above 25 years being the mandatory age requirement for any adoptive parent seeking to adopt a baby pursuant to Section 186(1) (2) of the Children's Act.
21. The applicants have been assessed and evaluated by various stake holders under the *Children Act*, and found suitable in terms of the set criteria. They are financially stable, physically, mentally, morally, socially and emotionally fit. They have no criminal record and does appreciate the consequences of adoption. In the circumstances, the applicants have met the necessary legal requirements to adopt the baby. This has been confirmed in the statutory report filed on 19<sup>th</sup> September, 2022, by the Director, Children Services.
22. The main factor for consideration before making any decision affecting affairs of a child is the child's best interest. This principle is articulated under Article 53(2) of *the Constitution* which provides:

“(2) A child's best interests are of paramount importance in every matter concerning the child.”
23. Section 4(2) and (b) of the Children's Act, 2001, replicates this fundamental principle.
24. I am satisfied that the applicants have met all the legal requirements for adoption. This is a simple straightforward case of a local adoption in which the all the required documents and affidavits have



been filed and legal procedure for adoption followed. Accordingly, it would be just to issue the appropriate adoption order as mandated by Section 154(1) of the Children Act, 2001 was enacted.

25. It is to be noted although the Children Act 2022, was assented to on 26<sup>th</sup> July 2022, the application herein was made under the Children Act 2001, in 2021. The provisions of Paragraph 3 of the Seventh Schedule to the Children Act 2022 permit the court to continue proceedings that were commenced under the repealed Act, and to be concluded thereunder.
26. Accordingly, the Court issues the following orders:
1. That applicants are hereby authorized to adopt the child, Baby MP alias Baby W alias AB.
  2. That the child shall henceforth be known by the name PMM.
  3. That PMW be and is hereby appointed as legal guardian of the child in the event of the death or incapacity of the applicants before he is of full age and fully self-reliant.
  4. That the Registrar General be and is hereby directed to enter this adoption into the Register of Adoptions.
  5. That the child be and is hereby presumed to be a Kenyan citizen by birth.
  6. That the Director of Immigration be authorized to issue the child with a Kenyan passport.
  7. The Guardian Ad Litem appointed by the Court, VWW, is hereby discharged.
27. Orders accordingly.

**DATED THIS 18<sup>TH</sup> DAY OF JULY, 2023.**

**RICHARD MWONGO**

**JUDGE**

Delivered in the presence of:

Komu - for the Applicants

Murage, Court Assistant

