



**In re CB (Child) (Adoption Cause E005 of 2023)
[2023] KEHC 21687 (KLR) (1 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E005 OF 2023
G MUTAI, J
AUGUST 1, 2023
IN THE MATTER OF THE CHILDREN ACT 2001
AND
IN THE MATTER OF ABANDONED BABY CB (THE CHILD)
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION
OF ABANDONED BABY CB BY PK AND JWM(THE JOINT APPLICANTS)**

BETWEEN

PKK 1ST APPLICANT

JWM 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The joint applicants herein moved this honourable court vide Originating Summons dated March 29, 2023 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 CB a Kenyan citizen by birth;
 - b. Pursuant to the provisions of section 187 of the *Children Act, 2022* this honourable court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of section 186 of the *Children Act, 2022*;
 - c. The applicants PKK and JWM be authorized to adopt baby CB ;



- d. Upon the making of the adoption order the child to be known as MMK ;
 - e. Upon the making of the adoption order JWM and MKN be appointed legal guardians of the child as provided for by the provisions of section 188 of the *Children Act, 2022*;
 - 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 June 29, 2021 in the Adopted Children Register as provided for by section 201 of the *Children Act, 2022*; 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 March 29, 2023. The applicants are adult Kenyan citizens born in 1971 and 1972 respectively. They are married to each other and are not blessed with children of their own. They have two adopted children namely BKK and MNK whose adoptions were granted on September 3, 2021 and June 3, 2022 respectively. The 1st applicant is also married to one PGK with whom they are blessed with 3 children. 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 businessman and businesswoman respectively.
 3. The child is estimated to have been born on June 29, 2021. She was found abandoned by school children from [Particulars Withheld] primary school while they were going to school. Accompanied by their teacher Mrs. Charity Muringo, they rescued the child and handed her to Mrs. Esther Wambui Mwangi who is the village elder. She informed the Assistant Chief Mr. Ndumia who advised her to report the matter to the police. She took the child to Naromoru Police Station where the matter was booked vide OB No.17/2/7/2021. The child was taken to Nanyuki Teaching and Referral Hospital for medical attention and committed to the legal custody of Neema Infant Rescue Centre by the Children's Court Nanyuki vide Care and Protection Number Case No. E022 of 2021.
 4. In its meeting held on March 2, 2022 the Case Committee of Little Angels Network declared the child free for adoption and a Certificate S/No.002xxx thereof was issued.
 5. Upon instituting these proceedings, Gladys Wangari Mwangi was on May 31, 2023 appointed guardian ad litem. The Director of Children Services through the Children Department, Mombasa and 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 report dated June 29, 2023 on July 4, 2023 recommending the adoption. Njeri Mwangi, Children Officer appeared in court on July 6, 2023 and testified that the child has a strong bond with the applicant, there are house helps, the home environment is adequate and the house secure and thus they were recommending the adoption. Equally the guardian ad litem filed her report dated July 5, 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. I have already set out the circumstances under which the child was found. The child was abandoned by the parents at birth. Nobody has come forward to claim the child and therefore the need for consent



pursuant to section 186(8) and 187 of the *Children Act, 2022* 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.”

10. Regarding the baby’s nationality, it is clear that she was found abandoned at Naromoru, Nanyuki within the Republic of Kenya. Article 14(4) of the *Constitution* 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 a Kenyan citizen by birth.
11. 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) 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.
12. Concerning the applicants’ suitability, they are Kenyan citizens aged 52 and 51 years respectively which places them under the age bracket of not less than 25 years nor more than 65 years for an adoptive parent in compliance with Section 186(2) of the *Children’s Act 2022*. The applicants have been described as financially stable as both are businessman and businesswoman with an average income of Kes.200,000/- and Kes.100,000/- respectively. They have 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 admit they will treat the baby like their biological child.
13. 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 available to them.”

14. 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 as the primary consideration before making any decision concerning a baby.
15. Further the court in the case of *In re MA (Baby)* [2021] eKLR stated: -

“This court in the case of *In re B (Baby)* [2018] eKLR held that the purpose of Kenya’s Constitution and Children’s Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in every adoption cause provision is of the best interest of that very child.”

16. The child herein was found abandoned thus 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 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. 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 CB who shall henceforth be known as MMK;
 - d. JWM and MKN are hereby appointed legal guardians of the minor in the event of any eventuality befalling the applicants;
 - e. The Registrar General is directed to enter the adoption order made herein and the estimated birth date of the child as June 29, 2021 in the Adopted Children’s Register.
 - f. The guardian ad litem is discharged.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 1ST DAY OF AUGUST 2023

GREGORY MUTAI

JUDGE

In the presence of: -

Ms. Ngugi for the Joint Applicants; and

Mr. Arthur Ranyundo – Court Assistant.

