



**In re N (Baby) (Adoption Cause E006 of 2022)
[2023] KEHC 21950 (KLR) (1 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 21950 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E006 OF 2022
JRA WANANDA, J
SEPTEMBER 1, 2023**

IN THE MATTER OF

ZOO 1ST APPLICANT

MWK 2ND APPLICANT

RULING

1. The Applicants are Kenyan citizens, a male and female married couple currently aged 40 and 41 years, respectively. The husband is said to be an Information & Communication Technology (ICT) Consultant and also a businessman. The wife is a Dental Specialist. They reside in Eldoret within Uasin Gishu County and wish to adopt the female child named Baby N whose copy of Birth Notification exhibited indicates that she was born on June 18, 2021 within Kakamega County. The child should therefore be about 2 years old now as at present.
2. It is stated that the child's biological parents, being related, surrendered the child through the local Chief and signed consents to that effect. The child was then placed in a children's home for adoption and was committed into the legal custody of the organization described as "Springs of Life Children's Home" vide Protection and Care Case No 31/2021 by the Chief Magistrate's Court, Kakamega. It is further stated that the Applicants received the child into their home vide the Foster Care Agreement with the said Spring of Life Children's Home and that, to date, the child is under the care and custody of the Applicants.
3. The Applicants commenced these proceedings by filing the Originating Summons dated July 28, 2022 filed in Court on July 29, 2022. There are various prayers in the Originating Summons but the main one is prayer No. 3 around which the rest of the prayers revolve and which seeks orders that the Applicants be authorized to adopt the said child. The Applicants are represented by Messrs Odero & Partners Advocates through Ms Wacheke Advocate. Together with the Originating Summons, the Applicants also filed the Chamber Summons dated July 28, 2022 and filed on July 29, 2022.



4. When I took over this matter, the impression I got was that the said Chamber Summons had already been dealt with and determined. However, upon perusal of the file, I have not been able to find evidence to that effect. For avoidance of doubt therefore, I will first deal with the Chamber Summons then give directions.
5. The Chamber Summons is brought under Section 188 of the Children Act No 29 of 2020, Laws of Kenya and the prayers sought therein are as follows:
 - i. That CWOKM and RCD of P O Box [particulars withheld] Eldoret in the Republic of Kenya be appointed Guardians ad Litem.
 - ii. That the Director, Children’s Department, Ministry of Labour, Social Security and Services investigate the Applicants’ fitness to adopt and file a Report.
6. I however observe that as regards prayer (ii) above, the Report by the Director, Children’s Department, Ministry of Labour, Social Security and Services has already been filed herein. The same is dated November 16, 2022 and was filed in Court on the same date. By the said Report, the Director has indicated that his office has investigated and verified the Applicants’ fitness to adopt the child. The Report therefore recommends that the adoption prayed for herein be allowed.
7. In support of the Chamber Summons, the 1st Applicant swore an Affidavit on July 18, 2022 in support of the proposed Guardians ad Litem. He depones that his wife and himself are desirous of adopting the child and have requested the said CWOKM and RBD who are persons of good standing in society and independent in this matter, to act as the minor’s Guardians ad Litem to advise the Court on the propriety of making an adoption order, he has known CWOKM and RCD for over 10 years, the two have known and interacted with the minor ever since she came into the Applicants’ care and they have agreed to be appointed Guardians ad Litem, he knows CWOKM and RCD as persons of good judgment, integrity and honesty, they are in his judgment and opinion fit and proper to be appointed to act as Guardians ad Litem, the two have informed him that that they have no interest in this adoption that is adverse to the interests of the child.
8. On their part, the proposed Guardians ad Litem have filed the joint Consent dated July 28, 2022 whereof they have confirmed that they are aware that the Applicants have applied to adopt the child and that they, the proposed Guardians ad Litem, have consented to be so appointed.
9. There is also the Affidavit of Fitness of Proposed Guardian ad Litem sworn by one TOO who has deponed that he is a Christian worker at [..... withheld] Fellowship and familiar with the both the Applicants and also the proposed Guardians ad Litem, he is conversant with the facts of the Application seeking to adopt the child, he swears the Affidavit to attest the fitness of CWOKM and RCD being appointed as Guardians ad Litem, he has known the proposed Guardians ad Litem for over 5 years as close family friends, the proposed Guardians ad Litem are conscientious and keenly aware of what they have been called to do in their role as the Guardians ad Litem and they consent to the proposed appointment, the two are objective, have good judgment and have no interests in the adoption herein that are adverse to the interests of the child. He therefore recommends that the two be so appointed.
10. On April 24, 2023, I interviewed in Court, one Dorothy Kioko who stated that she is a Childrens’ Officer from the office of the County Director, Children’s Services, Uasin Gishu County and also involved with Child Helpline 116. She stated she was standing in for the County Director, one Richard Mugata. She then referred to a Report dated November 16, 2022 filed in Court and confirmed that the same is genuine and reflects the findings of the Office. On the same April 24, 2023, I also interviewed in



Court, the proposed Guardians ad Litem. They both confirmed the averments made in the Affidavits already referred to.

11. I then adjourned the matter to May 29, 2023 to enable me peruse the file and give further directions. On that date I directed that I would at this stage take *viva voce* evidence which I fixed for July 21, 2023. On that date, I took the viva voce evidence on oath from both the Applicants and also from both the proposed Guardians ad Litem. I then formally adopted their Affidavits and Consents and formally admitted them in evidence. I then directed that I would give directions on July 21, 2023 and also directed the Applicants' Counsel to file brief Written Submissions.
12. Pursuant to the said directions, Counsel filed such brief written Submissions on August 11, 2023.

Determination

13. The power of the High Court to hear and determine Applications seeking adoption orders is derived from the provisions of Section 183(1) of the *Children Act 2022* which provides that "subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as "adoption order", authorising an applicant to adopt a child'.
14. It is also the position that in any matter concerning a child the "best interest of a child" is what is of paramount importance as provided for under Article 53(2) of the [Constitution](#) and Section 8 of the [Childrens Act](#), No 29 of 2022.
15. The appointment of a Guardian ad litem is provided for and guided under Section 188 of the *Children Act, 2022* which stipulates as follows;
 - (1) Where an application is made for an adoption order, the Court shall, either of its own motion or on application by any party to the proceedings, make an order appointing a fit person to be guardian ad litem of the child to whom the application relates.
 - (2) The guardian ad litem shall be under duty to—
 - (a) safeguard the interests of the child pending the determination of the adoption proceedings;
 - (b) investigate and report to the Court on the facts and circumstances relating to the adoption of the child;
 - (c) make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child;
 - (d) intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act; and
 - (e) undertake such other duties as the Court may from time to time direct, or as may be prescribed by the rules.
16. In respect to the appointment, duties and obligations of a Guardian ad Litem, Hon Lady Justice M T Matheka in the case of [In re MMA \(Minor\)](#) [2020] eKLR made the following observations:

“These are by no means light duties. It is expected that the guardian ad litem is a neutral person who will report to the court any relevant matters as they are. These duties have been forgotten over time and I have noted in various applications for adoption that the Guardian ad litem simply files an affidavit of consent, and that is it.



17. As further observed in the case above, Guardian ad litem may even may have to make adverse reports, where the situation demands, with regard to the Applicants, and should not be in a situation where there could arise a conflict of interest.
18. Considering this matter in general and having heard from the Children’s Officer, both the Applicants and both the proposed Guardians ad Litem, I am satisfied that the proposed Guardians ad Litem are suitable persons to be so appointed to safeguard and oversee the interests of the child while awaiting the determination of this matter. I am also satisfied that they have demonstrated an understanding of what their duties and obligations shall entail.
19. I however notice that there are Reports and other communication filed by or on behalf of the entity described as Little Angels Network, including the pre-Placement Report dated June 3, 2021. The Report does not however state who Little Angels Network is, what it is engaged in and under what capacity it has prepared the Reports. Yes, the Court may on its own be aware that Little Angels Network is a registered Adoption Society, however, this being a Court of record, such information or averment must come from the organization itself and documents supporting its capacity to file the Reports must also be supplied.

Orders

20. In the circumstances, I allow the Chamber Summons dated July 28, 2022 and at this stage, make the following orders:
 - i. The said CWOKM and RCD are now hereby formally appointed to be the joint Guardians ad litem for the child known as Baby N, pending further directions and/or determination of this matter.
 - ii. The said CWOKM and RCD shall, as now formally appointed Guardians ad Litem, file in Court a Report as envisaged under Section 188(2) of the *Children Act 2022* giving their general assessment, comments and observations over the whole Adoption process undertaken so far, including giving proposals and recommendations, if any, on any issue in connection thereto including, but not limited to, suitability of the Applicants to adopt the child.
 - iii. The Report dated November 16, 2022 prepared by the Director, Children’s, Ministry of Labour, Social Security and Services and signed by one Richard Mugata, is hereby adopted.
 - iv. The Applicants shall, within sixty (60) days from the date hereof, obtain and supply to the Court the following:
 - a. Copies of relevant documents relating to the organization described as Little Angels Network conferring upon it the legal capacity to prepare the Reports that it has supplied in this matter and/or confirming its registration or licensing as an Adoption Society.
 - b. Copy of the Report referred to in the Report dated November 3, 2021 from Little Angels Network exhibited to the Applicants’ Affidavit, and described as sub-County Children’s Officer Report dated September 29, 2021
 - c. Copies of the documents and Reports that were filed and/or relied upon in the case described as Kakamega Chief Magistrate’s Court Protection and Care Case No 31 of 2021 to admit the baby to Springs of Life Children’s Home.



- v. In the meantime, the child shall remain in the custody of the proposed adoptive parents under the regular supervision of the office of the County Director, Children’s Services, Uasin Gishu County, and which office shall be at liberty to inform the Court or bring to the Court’s attention, any issue, circumstance or observation that may be material to the Adoption process herein.
- vi. This matter shall be fixed for Mention on a date after lapse of sixty (60) days from the date hereof, to confirm compliance with the directions above and for further orders.
- vii. On the date of the Mention, a date shall also be fixed for *viva voce* interview of the proposed Legal Guardian named as ANK under oath.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 1ST DAY OF SEPTEMBER 2023.

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WANANDA J.R. ANURO

JUDGE

