



**In re D (Baby) (Adoption Cause E012 of 2023)  
[2023] KEHC 23998 (KLR) (18 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23998 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E012 OF 2023  
G MUTAI, J  
OCTOBER 18, 2023  
IN THE MATTER OF THE CHILDREN ACT, 2022  
AND  
IN THE MATTER OF BABY DAVID –THE CHILD  
AND  
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF  
BABY DAVID BY FOM AND FAO (THE JOINT APPLICANTS)**

**BETWEEN**

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

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

**AND**

**THE LITTLE ANGELS NETWORK ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The joint applicants are a Kenyan married couple born on 28<sup>th</sup> June 1976 and 8<sup>th</sup> July 1978, respectively. The applicants got married on 24<sup>th</sup> April 2010 at Deliverance Church, Mombasa. Their marriage has been blessed with one issue, DM, a male child born on 15<sup>th</sup> June 2012. They joint applicants now wish to adopt Baby D. The said child has been under their care and protection since 28<sup>th</sup> February 2020.
2. The joint applicants filed the Originating Summons dated 22<sup>nd</sup> May 2023 vide which they sought the following orders:-



1. Pursuant to Article 14(4) of the Constitution of Kenya, 2010 and Part II, section 7 (1) of the Children Act, 2022, this honourable court be pleased to declare the child, Baby D, a Kenya citizen by Birth;
  2. Pursuant to the provision of section 187 of the Children Act, 2022, this honourable court be pleased to dispense with the requirement of consent to the adoption as required by the provisions of section 186 of the Children Act, 2022;
  3. The applicants FOM and FAO be authorized to adopt Baby D;
  4. Upon the making of the adoption order, the child is to be known as DJ;
  5. Upon the making of the adoption order SAO be appointed legal of the child as provider by the provisions of section 188 of the Children Act, 2022;
  6. Upon the making of the adoption order, the Registrar General does make an entry recording the adoption and the estimated date of birth of the child as 27<sup>th</sup> February 2019 in the Adopted Children Registrar as provided for by section 201 of the Children Act, 2022; and
  7. The costs of this application be costs in the cause.
3. In the statement in support of the adoption application, the joint applicants averred that Baby D, who is estimated to have been born on 27<sup>th</sup> February 2019, was abandoned at the gate of Githogo Gertrude's Hospital by an unknown woman. The child was thereafter taken to Runda Police Station. The incidence was recorded in the National Police Service Occurrence Book as entry number OB 28/27/02/2019. The child was placed under the temporary care and protection of The Nest Children Home *vide* Nairobi Care and Protection Cause No. 474 of 2019 for a period of 3 years. As earlier indicated, the applicants received the child on 28<sup>th</sup> February 2020, upon executing a Care Agreement with The Nest Children Home.
  4. The applicants are both Kenyan citizens of sound mind. They profess the Christian faith and reside at Mshomoroni in the Republic of Kenya. The child is of the African race and is presumably a Kenyan. The child was declared free for adoption by the KKPI Adoption Society, a registered adoption society.
  5. In their application, the applicants averred that they have no criminal record, have the requisite financial ability to bring up the child, enjoy the support of their families and are emotionally and physically fit to take care of the child. They proposed that in the event the adoption order was issued, and they both die before the child attains the age of majority, SAO would be the legal guardian of the child. The consent of the said SAO was annexed.
  6. The applicants attached the following documents to their application; the committal order, their identity cards, marriage certificate; birth certificate of Delvin Mich, Infant/child Release Agreement dated 28<sup>th</sup> February 2020, Pre Placement Report dated 28<sup>th</sup> June 2018, Certificate Declaring a child Free for Adoption (serial No 668) and Report to Declare a Child Free for Adoption both dated 15<sup>th</sup> November 2019, the 1<sup>st</sup> Applicant's Mpesa Statement, the applicants DCI Police Clearance certificates, consent by the proposed legal guardian as well as her affidavit in support, affidavit of fitness of the proposed legal guardian, consent to act as guardian ad litem, various documents from the DCI, medical reports and the applicants family photographs.
  7. The applicants filed together with the said Originating Summons a chamber summons application dated 22<sup>nd</sup> May 2023, vide which they sought to have Joan Akinyi Odhiambo appointed as the guardian-ad-litem of the child.



## Court Proceedings

8. The chamber summons application dated 22<sup>nd</sup> May 2023 came up for hearing on 6<sup>th</sup> July 2023. Upon hearing the testimony of Joan Akinyi Odhiambo and being satisfied with her suitability, I appointed her as the guardian ad litem of Baby D. I directed her to prepare the requisite report within 30 days. I also directed the Director of Children Services, through the Children's Department Mombasa, to prepare and file the social inquiry report within the same period of time. I also set down this case for hearing on 19<sup>th</sup> September 2023.
9. The Court heard a total of 5 witnesses on 19<sup>th</sup> September and 11<sup>th</sup> October 2023. The 1<sup>st</sup> witness was Joshua Mwalimu Wambua of the Little Angels Network. He testified that they undertook the process of approving the applicants and placement of the child. The witness recommended adoption by the applicants. The 2<sup>nd</sup> Witness was the 2<sup>nd</sup> co-applicant. She testified that she has always had a passion for adoption. They have one biological child. She is aware that adoption is final and that once a child is adopted, he/she gets the right to inherit property belonging to adoptive parents. The 3<sup>rd</sup> Witness was the 1<sup>st</sup> co-applicant. He is a taxi driver in Mombasa. He testified that he, too, would like to take care of needy children and give them the best in life. He committed himself to correcting Baby D in the event he errs in life.
10. The guardian-ad-litem was the 4<sup>th</sup> Witness she testified that she works at Mombasa Beach Hotel and resides at Utange. She stated that she visited the applicants and established that the child was happy and had bonded well with the applicants and also with their biological child, DM. She recommended the adoption. The last witness was Ms. Louisa Kemuma, a Children's Officer with the Children's Department. Ms. Kemuma testified that a home visit was made on 27<sup>th</sup> September 2023. Subsequently, a report dated 6<sup>th</sup> October 2023 was filed on 10<sup>th</sup> October 2023. The report recommends the adoption. She testified that the applicants meet all the legal requirements set out in section 186 of the [Children Act, 2022](#) Ms. Kemuma thus recommended the adoption.
11. Upon the conclusion of the case I fixed this matter for judgment on 18<sup>th</sup> October, 2023.

## Analysis and Determination

12. I have considered the application herein, the documents in support and evidence of the various witnesses and the issues that emerge for determination by me 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.
13. I have already set out the circumstances under which the child was found. The child was abandoned by the mother at birth. Nobody has come forward to claim the child. The need for consent pursuant to sections 186(8) and 187 of the [Children Act, 2022](#) is therefore 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.”
14. Regarding the baby's nationality, it is clear from the evidence adduced that he was found abandoned at the gate of Githogo Gertrude's Children's Hospital on the day of his birth. Article 14(4) of the [Constitution](#) recognizes that a child who is less than eight 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.



15. In terms of age, the child is above six weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to Section 184 (b) of the Children 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.
16. Concerning the joint applicants' suitability, they are Kenyan citizens aged 47 and 45 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 Act, 2022. The applicants have been described as financially stable. 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 know that once an adoption order is made, it is permanent. They appreciate the role of a parent and admit they will treat the baby like their biological child.
17. 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.”
18. 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 Act 2022 which underscores the best interests of a child as the primary consideration before making any decision concerning a baby.
19. 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 is the best interest of that very child.”
20. The child herein was found abandoned. He therefore needs basic necessities like food, shelter, education and clothing. He 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 of 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 well-being of the child. As the Constitution and the law state, in all matters concerning a child, the best interests of the child are paramount.”

## Disposition

21. Based on the foregoing, the Court issues the following orders:-
1. The child Baby D is hereby declared a Kenya Citizen by birth pursuant to Article 14(4) of the Constitution of Kenya, 2010 and section 7(1) of the Children Act, 2022;
  2. The requirement of the consent of the biological parents of the child to the adoption under section 186 of the Children Act, 2022 is hereby dispensed;



3. The applicants FOM and FAO are hereby authorized to adopt Baby D who shall henceforth be called DJ;
4. SAO is hereby appointed as the legal guardian of Baby DJ in the event the joint applicants become deceased or are otherwise permanently unable to take care of Baby DJ before he attains the age of majority;
5. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the estimated date of birth of the child as being 27<sup>th</sup> February 2019 in the Adopted Children Register; and
6. The guardian-ad-litem JAO is hereby discharged.

Orders accordingly.

**DELIVERED, DATED AND SIGNED THIS 18<sup>TH</sup> DAY OF OCTOBER 2023 AT MOMBASA VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

