



**In re Baby A (Adoption Cause 11 of 2018)
[2024] KEHC 15075 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15075 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
ADOPTION CAUSE 11 OF 2018
CW GITHUA, J
NOVEMBER 21, 2024**

IN THE MATTER OF THE CHILDREN ACT NO.29 OF 2022

AND

IN THE MATTER OF BABY A

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY:

IN THE MATTER OF

FK 1ST APPLICANT

AWM 2ND APPLICANT

JUDGMENT

1. By an Originating Summons dated 21st September 2018, the applicants moved this court seeking to be allowed to adopt Baby A. They also prayed inter alia, that if their application was allowed, the child be known as DWK and the Registrar-General be directed to register her as such in the Adopted Children's Register; that she be presumed to be a Kenyan citizen by birth and that the Director of immigration services be directed to issue her with a Kenyan passport.
2. A perusal of the pleadings reveals that the applicants are Kenyan citizens and are a married couple who reside in [Particulars Withheld] village within Murang'a Township. At the time of filing their application, the 1st applicant was 49 years old while the 2nd applicant was 45 years old. They both profess the Christian faith.
3. The court record shows that after appointment of the guardian ad litem, the applicants failed to take any step to prosecute the summons as a result of which it was dismissed for want of prosecution on 27th March 2021. However, following an application by the applicants, the summons was reinstated



on 3rd May 2023 on condition that any pending documentation including the Director of Children Services Report was filed within 60 days of reinstatement of the summons.

4. From the material before the court, Baby A was found abandoned at [Particulars Withheld] area along the [Particulars Withheld]-Kitune road on 13th July 2016. She was rescued by good Samaritans and taken to [Particulars Withheld] Administration Police post. She was later committed to the Child Welfare Society's Murang'a Rescue Centre as a child in need of care and protection. The Society in collaboration with the police made concerted efforts to trace her family but their efforts did not bear any fruits. On 3rd November 2017, Baby A was declared free for adoption and on 29th November 2017, she was placed under the foster care of the applicants.
5. The court records further show that officers from the Child Welfare Society of Kenya and the County Coordinator for Children Services made home visits and social inquiries with a view of determining the suitability of the applicants to adopt Baby A. They filed separate reports recommending adoption of the child by the applicants. The reports are dated 23rd May 2022 and 27th November 2023 respectively.
6. At the hearing of the Originating Summons on 1st of October 2024, both applicants and the Guardian Ad litem testified. The applicants confirmed that they had been taking care of Baby A and have provided for her every need since she was placed under their foster care 7 years ago. They further testified that they had been blessed with a biological son and they wanted a girl to complete their family since they had been unable to get one of their own. They stated that they loved Baby A as their own child and they pledged to continue raising her in accordance with Christian values and assist her to exploit her potential. They also confirmed that they were both gainfully employed and they therefore had ability to give her the support she required both emotionally and financially including giving her a good education.
7. In her testimony, the Guardian ad litem supported the applicants in their bid to adopt Baby A and confirmed that she knew them well and was certain that they had ability to provide the child with a happy and secure home and the resources she may require to exploit her potential to the fullest.
8. The court also interviewed Baby A. She described the applicants as her parents and stated that she was happy living with them and would not want to live in any other home. She stated that she loved them as her parents and wanted to continue being their daughter. She stated that currently, she was a pupil at the [particulars Withheld] Academy in Grade 3.
9. Having carefully considered the summons together with all the documents filed in its support, I find that the applicants have complied with all the procedural requirements for local adoptions as stipulated in Section 184 to Section 186 of the *Children Act* No. 29
10. In addition, from the evidence on record, I am satisfied that the applicants have sufficiently demonstrated that they were a couple with a stable home and a steady income noting that they were both gainfully employed. The 1st applicant was a teacher employed by the Teachers Service Commission while the 2nd applicant was employed as a Public Health Officer by the County Government of Murang'a. They have demonstrated that they were responsible citizens who were socially, emotionally and financially capable of providing a stable and warm home for the child as well as a conducive environment for her emotional support, growth and development.
11. Article 53 (2) of *the Constitution* expressly provides that when considering any decision involving a child, the child's best interest must be given priority. It provides thus:

“A child's best interest are of paramount importance in every matter concerning a child.”



This constitutional principle has been entrenched in the Convention on the Rights of the Child at Article 3 (1) which has been replicated in Section 8 (1) of the *Children Act No. 29 of 2022* which is in the following terms;

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—

- (a) the best interests of the child shall be the primary consideration;
- (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.

12. Section 8 (2) proceeds to state thus;

“All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—

- (a) safeguard and promote the rights and welfare of the child;
- (b) conserve and promote the welfare of the child; and
- (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.”

13. Applying the above principles to the facts of this case, I have no doubt in my mind that it will be in the best interest of Baby A to be adopted by the applicants. The child has been living with the applicants for the last seven years and they have established a close familial relationship which has seen the child recognize the applicants as her parents. In my considered view, allowing the summons as prayed is the only way that Baby A’s rights and welfare can be protected and promoted.

14. For the above reasons, it is my finding that the instant Originating Summons is merited and I accordingly allow it on the following terms;

- i. The applicants are allowed to adopt Baby A who shall henceforth be known as DWK.
- ii. The Registrar- General is directed to enter this adoption in the Adopted Children Register.
- iii. That SJM is appointed as the child’s legal guardian in the event of the death or incapacity of the applicants before the child attains full age and was self-reliant.
- iv. The guardian ad litem is hereby discharged.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG’A THIS 21ST DAY OF NOVEMBER 2024.

HON. C.W. GITHUA

JUDGE



In the presence of:

1st applicant present.

2nd applicant present.

Ms. Susan Waiganjo, Court Assistant.

