



**In re Baby FF alias FFMM (Infant) (Adoption Cause 2 of 2018)
[2024] KEHC 14229 (KLR) (12 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
ADOPTION CAUSE 2 OF 2018
RM MWONGO, J
NOVEMBER 12, 2024**

IN THE MATTER OF

**AMK 1ST APPLICANT
RWM 2ND APPLICANT**

JUDGMENT

1. The applicant lodged in this court an amended originating summons dated 4th September, 2024 seeking the following orders:
 1. That applicants be authorized to adopt Baby FF alias FFMM Baby BI to be known as TBM.
 2. That consent of the natural mother be dispensed with.
 3. That the Registrar General be directed to enter this adoption in the Adopted Children’s Register.
 4. That a Birth Certificate be issued to the child with a presumed birth date of 17th August, 2015 by the preferred name of TBM.
 5. That KWI be appointed as legal guardian of the child.
2. The application is supported by the joint affidavit of AMK and RWM.

Background of the applicants

3. The applicants in their statement dated 4th September, 2024 state that they have met the legal prerequisites set out for adopting a child and have sufficiently bonded with the child. They urge 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 that they are Kenyan citizens of sound mind; the father aged 47 and the mother aged 57 years old, having been born in 1976 and 1962, respectively. They reside in Kirinyaga and



solemnized their marriage on 12th September, 2009. They do not have any other children, biological or otherwise. They say that their current residence is a comfortable environment for nurturing the child. They love the child they intend to adopt.

5. They state that they are in good health and financially stable considering that they have stable income from their businesses and farm. Therefore, they are fully competent to take care of the child. They have never been charged with nor convicted of a criminal offence referred to in the Third Schedule of the Children's Act.
6. The Applicants have proposed KWI 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. Baby FF alias FFMM is a child of the male sex, estimated to have been born on 17th August, 2015. He was abandoned on 20th August, 2015 in Kimbimbi Hospital and the institution tried to trace the mother or father without success. The matter was reported at Wang'uru Police Station vide OB29/26/8/2015. The infant was referred to New Life Home Trust for care and protection.
8. On 28th August, 2015, the Children's Office through Protection & Care Case No. 2 of 2015 successfully applied to the Children's Court in Nairobi for committal of the child into the custody of New Life Home Trust.
9. The Wang'uru Police Station having received the first report of the child's abandonment confirmed on 21st March, 2016 that they had not managed to trace the biological parents of the child. Further, that no person or relative had claimed the child since he was rescued and committed to the children home.
10. The child's history was reviewed by Change Trust, which also declared the child free for adoption on 24th June, 2016. This is evidenced by Certificate of Freeing a Child for Adoption Serial Number 00135.
11. The applicants instituted the adoption proceedings, and sought the appointment of GJK as the guardian ad litem vide Chamber Summons dated 12th June, 2018. The same was confirmed through a Court Order dated 25th October, 2023. On 17th October, 2024 the court confirmed that the Guardian ad Litem report and the Children Department assessment and evaluation report had been filed. Both reports recommended the prospective adoption as being in the best interest of the child.
12. The issue that arises is whether the applicant should be authorized to adopt the child.

Analysis and Determination

13. The court has carefully considered the application herein, the affidavits in support together with the annexures thereof. The court notes that this is a local adoption given that the applicant is a Kenyan citizen. Section 181 (1) of the Children's Act, 2022 provide that-

“ 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.”
14. The child is above six (6) weeks old and below 18 years. This is the statutory requisite age bracket for a child to qualify for adoption under Section 184 (1) of the Children's Act. The child has been declared free for adoption and was effectively placed under the care and control of the applicant for a continuous period of three months pursuant to Section 184(1) of the Children's Act.



15. Since New Life Home Trust offered the child for adoption hence, the baby is available for adoption in accordance with the provisions of the Children’s Act.

Suitability of the applicants for adoption.

16. As far as the applicants are concerned, they are adults aged below 65 years and above 25 old. This is the mandatory age bracket for any adoptive parent seeking to adopt a baby pursuant to Section 186(1)(2) of the Children’s Act. Further, the applicants are Kenyan citizens thus placing the application herein as one of local adoption.
17. The applicants have been assessed and evaluated by various stake holders and found suitable in terms of the set criteria. They are financially stable, physically, mentally, morally, socially and emotionally fit. Further, have no criminal record and appreciate the consequences of adoption. In the circumstances, the applicants have met the necessary legal requirements to adopt the baby.

Is the adoption in the best interest of the child?

18. The main factor for consideration before making any decision affecting affairs of a child is the child’s best interest. This principle is articulately covered under Section 4(2) and (b) of the Children’s Act, which is a reflection of Article 53(2) of *the Constitution*. Article 53(2) provides:

“(2) A child’s best interests are of paramount importance in every matter concerning the child.”

19. Having been satisfied that all the required documents and affidavits have been filed and legal procedure for adoption followed it would be just to issue an adoption order. Section 183 (1) *Children Act*, 2022 mandates the Court to make an adoption Order if it is satisfied that it is for the best interest of the child and upon all legal requirements being complied with.
20. Accordingly, the prayers in the amended originating summons are allowed as follows and it is ordered that:
1. The consent of the natural mother is hereby dispensed with.
 2. The applicants AMK and RWM are hereby allowed to adopt Baby FF alias FFMM.
 3. The Registrar General is directed to enter the adoption in the adopted Children’s Register.
 4. It is ordered that a Birth Certificate be issued to the said child with a presumed birth date of 17th August, 2015 and by the preferred name of TBM.
 5. KWI of P.O Box 3X6 Kiserian is hereby appointed as the legal guardian of the said child.
21. It is so ordered.

DATED AT KERUGOYA THIS 12TH DAY OF NOVEMBER 2024.

R. MWONGO

JUDGE

In Chambers

Delivered in the presence of:

1. Ms. Wambui - for the Applicants



2. AMK - 1st Applicant
3. RWM - 2nd Applicant
4. Court Assistant, Murage

