



**In re Baby CB (A Child) (Adoption Cause E005 of 2024)  
[2024] KEHC 14797 (KLR) (6 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14797 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E005 OF 2024  
G MUTAI, J  
NOVEMBER 6, 2024  
IN THE MATTER OF THE CHILDREN ACT, 2022  
AND  
IN THE MATTER OF ADOPTION OF BABY CYRUS BARAK (A CHILD)  
AND  
IN THE MATTER OF AN APPLICATION FOR ADOPTION**

**IN THE MATTER OF**

**MMK ..... 1<sup>ST</sup> APPLICANT  
GDD ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

**Introduction**

1. The Joint Applicants are a married couple. MMK was born on 18<sup>th</sup> May 1982, while GDD was born on 2<sup>nd</sup> August 1990. They hold national identity card numbers 23###289 and 28##056, respectively.
2. The Joint Applicants got married on 14<sup>th</sup> December 2018. They live in [Particulars withheld], Ukunda, in Kwale County and work in Mombasa. They are both teachers and describe themselves as being financially stable and willing to assume the responsibilities that come with the adoption of a child.

**The Originating Summons dated 2<sup>nd</sup> April 2024**

3. Being desirous of adopting Baby CB, the Joint Applicants filed the Originating Summons dated 2<sup>nd</sup> April 2024, vide which they sought the following orders:-
  1. That MMK and GDD of P.O Box 1-80100 Mombasa of Kenya, national identity card numbers 23###89 and 28##56, respectively, be appointed guardians ad litem in the instant matter;



2. That the Director of Children Services be directed to compile the requisite report on the 1<sup>st</sup> and 2<sup>nd</sup> Applicants' fitness to adopt Baby CB under the provisions of the *Children's Act, 2022*;
  3. That the Applicants be authorized to adopt CB, a child to be known as SAM ;
  4. That the Register General be directed to enter this adoption into the Register of Adoptions and a subsequent birth certificate issued by the Registrar of Births and Deaths; and
  5. That the Court does issue such other orders as may be necessary in the best interests of the child.
4. The Originating Summons was supported by the annexed joint affidavit of MMK and GDD, to which various documents were annexed. I have perused the same and considered them while writing this judgment.
  5. On 1<sup>st</sup> July 2024, the Joint Applicant's counsel filed further (amended documents, including the report of the adoption society. This was to correct errors the court noted in the initial Originating Summons.

### **The Child**

6. Baby CB was abandoned at [particulars withheld] Market in Machakos on 14<sup>th</sup> May 2023. At the time he was found, he was estimated to be 6 months old. He was taken to the Machakos Hospital by Kenya Police Officers and a good Samaritan. His rescue was recorded in the [particulars withheld] Police Station occurrence Book as entry OB 43/14/5/23. Upon his discharge on 16<sup>th</sup> May 2023, the child was placed in Mahali Pa Maisha Children's Home. On 1<sup>st</sup> August 2023, he was committed to the said home by the Court via Care and Protection Cause No. E038 of 2023.
7. The child has been in the custody of the Joint Applicants since 27<sup>th</sup> November 2023. The Change Trust Adoption Society Case Committee declared him free for adoption at its meeting on 28<sup>th</sup> November 2023. The Certificate to Declare the Child Free for Adoption bears serial number 00671.

### **The Appointment of a Guardian ad litem**

8. The Joint Applicants applied to have Ms RM, a resident of Kilifi, and a teacher at [Particulars withheld] Secondary School. Upon being satisfied that Ms Mapenzi understood her role, I appointed her as the guardian ad litem on 11<sup>th</sup> July 2024 and directed her to file her report within 30 days of the said date. I also ordered the Director of Children Services to conduct a social enquiry and prepare and file the requisite report assessing the suitability of the Joint Applicants.

### **Evidence of the Witnesses**

9. This matter proceeded by way of viva voice evidence. A total of 5 witnesses testified. I will set out the evidence of the witnesses below.
10. The first witness for the applicants was ZAO. Mr Apoko works for the Directorate of Children Services (DCS) and is stationed in Kwale. He testified that the Court ordered DCS to conduct a social enquiry, which they did by conducting a home visit. They found that the home of the Joint Applicants was sufficient for the child. He testified that the adoption has the support of the family. It was his evidence that the Joint Applicants met all the legal requirements.



11. Mr Apoko produced the Directorate of Children Services report dated 20<sup>th</sup> September 2024. In the said report, the Directorate stated that:-

“The child stands to gain with the adoptive parents with whom he has bonded well, and an adoption into that family would be in his best interests.”
12. The guardian ad litem, RM, was the second witness. Ms. Mapenzi testified that she visited the joint applicants four times and noted that they had bonded well with the child. She testified that the child has toys that he plays with. She produced a report dated 13<sup>th</sup> August 2024.
13. In her report, the guardian ad litem noted that the child appeared well-dressed and well-taken care of. The report recommended the adoption.
14. MMK was the third witness. Morris lives with his wife, his co-applicant, in [Particulars withheld], Ukunda. He testified that he and his wife don't have children. Morris stated that he was aware that adoption is permanent and that Baby CB would have a right to inherit from them. He stated that even if they got a child of their own, they would consider Baby CB as their firstborn and would not discriminate against him.
15. GDD was the fourth witness. She is the wife of M. She testified that they agreed to adopt after they couldn't get children of their own. She, too, was aware of the permanent nature of adoption.
16. The fifth and last witness was Ms. SFL. Ms. M resides in Bamburi, in Mombasa, and is a primary school teacher. Ms Melody is the sister of Gift, the 2<sup>nd</sup> applicant and is not married. Ms. Melody stated that she consented to be the legal guardian. She knows the duties of the legal guardian and has freely agreed.
17. I have considered the application, supporting documents, and various witnesses' evidence. The issues that emerge for determination are whether the child is available for adoption, whether the Joint Applicants are fit to adopt the baby, and, most importantly, whether the adoption is in the child's best interest.
18. I have already set out the circumstances under which the child was found, and I need not rehash it here. I must, however, highlight the fact that the birth mother abandoned Baby CB when he was about six months old. He was found on 14<sup>th</sup> May 2023. Neither the birth mother nor the unknown biological father have come forward to claim him. In the circumstances, the need for the biological parents' consent, pursuant to sections 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.”
19. Regarding the baby's nationality, the evidence adduced shows that he was abandoned approximately six months after birth by his unknown biological mother. Article 14(4) of the *Constitution* of Kenya, 2010 states that a child under eight years of age whose nationality and parents are unknown is presumed to be a Kenyan citizen by birth. Given this provision, the child herein is presumed to be a Kenyan citizen by birth.
20. Regarding age, the child is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive baby under Section 184 (b) of the *Children Act*, 2022. Further, Section 185(1) of the said *Act* states that any child who is a resident of Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt the child is fit for adoption.



21. Concerning the Joint Applicants' suitability, the 1<sup>st</sup> Applicant is a Kenyan citizen by birth, aged 42. The second applicant is also a Kenyan citizen. At the time of the delivery of this judgment, she is 34. Given their respective ages, they are within the age bracket of not less than 25 or more than 65 years for adoptive parents and are thus in compliance with Section 186(2) of the *Children Act*, 2022. From the records that I have seen, the Joint Applicants have the means to take care of the child. They have no criminal records. Since the placement of the child into their custody, the child has fully bonded with them. They understand the consequences of adoption and know that once an adoption order is made, it is permanent.
22. Consequently, I do not doubt that they meet the 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 bring up the child and to furnish her with appropriate support and maintenance within their resource base available to them.”
23. 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.
24. 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.”
25. Baby CB was abandoned approximately six months after birth by the mother. He, therefore, needs necessities like food, shelter, education and clothing. He has fully integrated with the Joint Applicants. It is obviously in the child's best interests that this adoption application is 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 child's best interests are paramount.”

### **Determination and Final Orders**

26. In my view, the Originating Summons has merit. Consequently, I issue the following orders:-
1. I declare the child, Baby CB, a Kenyan citizen by birth;
  2. I dispense with the consent of the biological parents to the adoption, as Baby CB was abandoned about six months after birth by the birth mother;
  3. I hereby authorize MMK and GDD to adopt Baby CB;
  4. I declare that Baby CB shall henceforth be known as SAM ;



5. I appoint SFL as the legal guardian of SAM and entrust her with his care in the event the Joint Applicants become deceased or are otherwise permanently unable to take care of him before he attains the age of majority; and
  6. I direct the Registrar General to make an entry recording the adoption order made herein and the date of birth of SAM as being 14<sup>th</sup> November 2022 in the Adopted Children Registrar as provided for by section 201 of the *Children Act*, 2022; and
  7. The guardian ad litem, RM, is hereby discharged.
27. I make no orders regarding costs as this is a non-contentious adoption cause.
28. Orders accordingly.

**DATED AND SIGNED AT MOMBASA THIS 6<sup>TH</sup> DAY OF NOVEMBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Ms Barbara Auma, holding brief for Mr. Tsofwa Mweni, for the Applicant; and

Arthur - Court Assistant.

Page 5 of 5

