



**In re MJM (Adoption Cause 1 of 2024)  
[2024] KEHC 16310 (KLR) (17 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16310 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
ADOPTION CAUSE 1 OF 2024  
RM MWONGO, J  
DECEMBER 17, 2024  
IN THE MATTER OF MJM**

**IN THE MATTER OF**

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

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

**JUDGMENT**

1. The Application by the applicant is an originating summons dated 5<sup>th</sup> January 2024, seeking the following orders:
  1. That JMK be appointed as the guardian *ad litem* in this case.
  2. That Director of Children Service be directed to compile the requisite report on the applicants' fitness to adopt the child, MJM, under the [Children Act](#).
  3. That the applicants be authorized to adopt the child MJM to be known as MMG.
2. The application is supported by the joint affidavit of FGM and EWK based on the following grounds:
  - a. That the biological parents of the child are unknown.
  - b. That the applicants got married in May, 2009.
  - c. That the applicants have been living with the child and taking care of his needs since 26<sup>th</sup> March, 2023.
  - d. That the parent institution (Happy Rock Center) has released the minor to the applicants for adoption.
  - e. That it is in the best interest of the child that the orders sought are granted.



## **Background of the applicants and supporting documents**

3. The applicants in their statement dated 5<sup>th</sup> January, 2024 state that they have met the legal prerequisites set out for adopting a child and have sufficiently bonded with the child. 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; aged 56 and 62 years old, having been born in 1968 and 1962, respectively. They reside in Kirinyaga East. They solemnized their marriage on 2<sup>nd</sup> May, 2009. They do not have other children, biological or otherwise.
5. They are in good health and financially stable considering that they have stable income from their businesses and farm. Therefore, 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. They have attached their Police Clearance Certificates dated 23<sup>rd</sup> August, 2022.
6. The applicants have proposed LKM and R.W.K as the legal guardian of the child in the event of her death or incapacity before the child is of full age and fully self-reliant. They state that their current residence is a comfortable environment for nurturing the child. They love the child they intend to adopt.
7. In support of their application they annexed the following: Photocopy of their ID cards; Marriage Certificates; Letter by Happy Rock Centre on Release of the subject to them; Report to declare a child free for Adoption by Little Angels Network dated 21<sup>st</sup> August 2019; Certificate of Declaring a child Free for Adoption by Little Angels Network dated 21<sup>st</sup> August 2019; Birth Certificate of the subject; Happy Rock Centre Admittance dated 9.6.2014.
8. In addition, the applicants filed copies of the following; Committal Order by the Children Magistrate's Court Tononoka for the subject dated 7 November 2014. Report of the Sub County Children's Department Kapseret/Kesser Sub Counties regarding a Child of Need of Care and Protection; Warrant of Commitment dated 29 April 2019 by the Eldoret Chief Magistrate's Court in CM P & C 53/2019; and a Pre-Placement Report dated 7 October 2022 by Little Angels Network, and Police Clearance Certificate for both applicants.

## **The child**

9. Concerning the minor, the subject of these proceeding, baby MJM, is a child of the male sex, he is estimated to have been born on 27<sup>th</sup> June, 2012. On 24<sup>th</sup> November, 2013, the child's mother abandoned him to a stranger's home. They reported the abandoned child at Inuka Police Station at Likoni where a report of the abandonment and rescue of the child was recorded in OB 24/11/2013. The child was admitted to Happy Rock Centre Children's Home.
10. On 7<sup>th</sup> November, 2014, the children's office through Protection & Care Case No. 293 of 2014 successfully applied to the Children's Court in Nairobi for committal of the child into the custody of Happy Rock Centre Children's Home.
11. The Good Samaritan couple that had rescued the child confirmed on 16<sup>th</sup> August, 2019 that they have never seen the child's mother or relative. The Inuka Police Station that first received a report of the child's abandonment confirmed that they had not managed to trace the biological parents of the child and no person or relative had claimed the child since he was rescued and committed to the children home.



12. The child's history was reviewed by a Case Committee of Little Angels Network and declared free for adoption on 21<sup>st</sup> August, 2019. This is evidenced by Certificate of Freeing a Child for Adoption Serial Number 002127.
13. Having instituted adoption proceedings, the applicant sought the appointment of JMK as the guardian *ad litem* vide Chamber Summons dated 11<sup>th</sup> March, 2022. The court issuing an order on 22<sup>nd</sup> February, 2024 in respect of the Guardian *ad litem* Report.
14. On 7<sup>th</sup> March, 2024 the court confirmed that the Guardian *ad litem* report had been filed.

### **Analysis and Determination**

15. Having considered the application herein, the affidavits in support together with the annexures thereof, it is clear that this is a local adoption given that the applicant is a Kenyan citizen.

Section 181 (1) of the *Children's Act*, 2022 provides 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.”

16. The child is above six (6) weeks and below 18 years which is the requisite age bracket for a child to qualify for adoption (See Section 184 (1) of the *Children's Act*). He has been declared free for adoption and 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*. Since Little Angels Network offered the child for adoption, he is available for adoption.

### **Suitability of the applicants for adoption.**

17. The applicants are adults aged below 65 years and above 25 years being the mandatory age requirement for any adoptive parent seeking to adopt a baby pursuant to Section 186(1)(2) of the *Children's Act*. The applicants are Kenyan citizens thus placing the application herein as one of local adoption.
18. They have been assessed and evaluated by various stake holders and authority required by law 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 does appreciate the consequences of adoption. In the circumstances, the applicants have met the necessary legal requirements to adopt the baby.
19. As to whether the adoption in the best interest of the child 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 Article 53(2) of the *Constitution* and Section 4(2) and (b) of the Children's Act.  
Article 53(2) provides:  
(2) A child's best interests are of paramount importance in every matter concerning the child.”
20. The court is satisfied that all the required documents and affidavits have been filed and legal procedure for adoption followed. As such it would be just to issue an adoption order.
21. 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.



## **Disposition**

22. In the circumstances, the court hereby allows the originating Summons dated 5<sup>th</sup> January, 2024. The following orders are hereby issued; that:
1. The applicants be and are hereby authorized to adopt the child MJM who shall henceforth be known as MMG.
  2. The consent of the parents of the child is hereby dispensed with.
  3. The Registrar of Births and Deaths is hereby directed to enter the child into the Register for Adoptions.
  4. The Guardian *ad litem* JMK be and is hereby discharged.
  5. The Court hereby appoints LKM and RWK as the Legal Guardians of the child.
23. Orders accordingly.

**DATED AT KERUGOYA THIS 17<sup>TH</sup> DAY OF DECEMBER, 2024**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Hamba holding brief for Nasongo for Applicants

Applicants present in Court

Court Assistant, Murage

