



**In re baby B alias baby M alias baby MB (Adoption Cause 10 of 2020)
[2021] KEHC 9787 (KLR) (3 September 2021) (Judgment)**

Neutral citation: [2021] KEHC 9787 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 10 OF 2020
JN ONYIEGO, J
SEPTEMBER 3, 2021
IN THE MATTER OF OF ADOPTION OF
ABANDONED BABY B ALIAS BABY M ALIAS BABY MB**

BETWEEN

PKK 1ST APPLICANT

JWM 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. Through an Originating Summons dated September 16, 2020 PKK (hereinafter the 1st applicant) and JWM (hereinafter the second applicant) moved this court on September 21, 2020 pursuant to Sections 11,54,156,158,159,160,161,162 and 164 and Article 14 (4) of *the Constitution* seeking orders that;
 - (a) The baby herein be declared a Kenyan citizen under Article 14 (4) of *the Constitution*.
 - (b) The court does dispense with the requirement for consent pursuant to Section 158 of the *Children Act*.
 - (c) The applicants be authorized to adopt baby boy alias Baby M alias MB
 - (d) Upon making the adoption order the child be known as BKK
 - (e) Upon making the adoption order JWM and MKN be appointed legal guardians of the child as provided for by the provision of Section 164 of the *Children Act* 2001.
 - (f) upon making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of birth of the child as February 24, 2018in the adopted children’s register pursuant to Section 170 of the *Children Act* 2001.



2. The application is grounded upon particulars and averments contained in the statements of particulars jointly sworn by the applicants on July 16, 2020.
3. The applicants are Kenyan citizens born on December 26, 1971 and June 6, 1972 respectively. The two are a couple who got married customarily sometime in January, 1996. Unfortunately, the two have not been blessed with any biological child.
4. Due to the desire to be a father, the 1st applicant with the consent of the 2nd applicant contracted a second marriage in the year 2014. Out of this second marriage, children aged 4 years, 3 years and 6 months were born.
5. Having given up on the possibility of the 2nd applicant conceiving, they decided to adopt a baby. The motivation to adopt the baby was prompted by their love for children; desire to continue with a happy marriage by having a child/children; to have a complete family to raise with the second applicant willing to be a mother and, to shed off the stigma of not having a baby before her peers who kept discussing about their children while she has nothing to contribute about children.
6. Regarding the baby estimated to have been born on February 24, 2018, as per his birth notification S/ No xxxx, he was found abandoned at [Particulas Withheld]. He was rescued and taken to Nyahururu hospital for medical attention. The matter was reported at Marmanet police patrol base vide OB No xxxx.
7. On July 27, 2018 the children officer Nyahururu Sub County sought a court committal order of the child to Neema House Infant Rescue Center. Vide care and protection case No xxxx the Nyahururu Chief magistrate's court committed the child to the said institution for a period of one year.
8. Meanwhile, investigations commenced by the police and the children department looking for the parents. On 31st July, 2018 when the child was presented in court for a progress report, the biological mother to the baby was summoned and eventually charged with neglect to which she pleaded guilty and fined Kshs10,000.
9. When the biological father was traced, he disowned the baby claiming he was born out of wedlock.
10. The biological mother informed the children officer that she had three other children and therefore incapable of taking care of the child. Finally, both parents signed a voluntary consent after understanding the memorandum explanatory notes thus surrendering the child to the Little Angels for adoption. The mother signed hers on February 22, 2019 before Emmanuel Mwangambo Advocate while the father WKW, signed his on September 27, 2019 before the area chief and later a final legal consent before Mwangambo advocate.
11. Subsequently, the process of adoption commenced with the Little Angels Network holding its case committee on May 8, 2019 where the baby was declared free for adoption. The child was placed under the care and control of the applicants on October 19, 2019 for three months consecutive period pursuant to Section 157 of the [Children Act](#).
12. Upon institution of the proceedings herein, GWM was appointed guardian Ad litem on December 8, 2020 pursuant to the Chamber Summons dated September 16, 2020. Consequently, the Director Children Services and guardian Ad litem were ordered to file their respective social inquiry reports. On 19th January, 2021 the guardian Ad litem filed her report recommending the adoption. The Director Children Services through Mombasa County Children County Coordinator filed his dated May 4, 2021 also recommending the adoption. On their part, Little Angels filed theirs dated 6th May, 2019 also approving the adoption.



13. I have considered the application herein, stakeholders' reports recommending the adoption and testimonies from various witnesses. The child herein was found abandoned at the entrance of Olijabet after birth as recorded by the birth notification found with the baby. Efforts to trace the parents led to the mother being arrested and charged for the offence of neglecting a child.
14. According to the mother, she is financially unable to look after the baby as she has three other children depending on her. The father claimed he had no interest looking after a child born out of wedlock. They eventually signed a voluntary consent surrendering the child for adoption. Accordingly, the requirement for consent pursuant to Section 158 and 159 was satisfied.
15. The child having been born in Kenya by a Kenyan parent is automatically a Kenyan citizen by birth. Further, the child is a resident of Kenya and born in Kenya hence eligible for adoption pursuant to Section 157 of the *Children Act*. Equally, he is above six weeks and below 18 years thus complying with Section 156 of the *Children Act*. Lastly, the child has been declared free for adoption and placed for a mandatory 3 months period under the care and control of the adoptive parents in compliance with Section 157 of the *Children Act*. In my view, the child has met the requisite conditions for adoption.
16. Considering the suitability of the applicants, they are Kenyan citizens thus qualifying the adoption as a legal adoption. They are aged between 25 and 65 years being the recommended age bracket for an adoptive parent in compliance with Section 158 of the *Children Act*.
17. Upon being evaluated and assessed by all stakeholders, the applicants were found to be dedicated Christians with no criminal record and financially stable earning kshs 420,000 monthly income all generated from various businesses among them supplying building materials and operating a guest house. Secondly, morally and medically, they were declared as upright and fit.
18. During the hearing, they acknowledged the fact that they understood the consequences of adoption and that it is permanent. They appreciate their role as parents and that they have a duty to treat the baby as if he were their biological child. To that extent, I find that the applicants are suitable to adopt the baby.
19. Lastly, I wish to address the issue whether the adoption is in the best interests of the child. The child herein was originally abandoned by the biological parents. The mother does not want to bear the burden of taking care of him due to economic challenges. The father claimed that he does not recognize a child born out of wedlock.
20. Basically, the child is not wanted at all by either parent. Like any other ordinary child, he needs parental guidance, protection and care. He has found solace in the applicants' hands. He needs basic provision like food, shelter, clothing and education all of which are available while under the care of the applicants. He has fully integrated with the applicants and displacing him will be disastrous to his future.
21. It is trite that before a court of law or any administrative institution makes any decision concerning a baby, it must consider the best interests of a child. This principle is underpinned under Article 53 (2) of *the Constitution* as well as Section 4 (2) and (3) of the *Children Act*. I have no doubt the adoption herein is in the best interests of the child.
22. Accordingly, the application herein is allowed with orders that;
 1. The applicants are hereby authorized to adopt bay M alias M B who hereafter shall be known as BKK.
 2. The child's date of birth shall be February 24, 2018 and place of birth Nyahururu.



3. The guardian Ad litem is discharged.*
4. The Registrar General do enter the adoption order in the adopted children's register
5. JWM and MKN are appointed as legal guardians in the event of any incapacitation or death of the applicants

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 3RD DAY OF SEPTEMBER, 2021

J. N.ONYIEGO

JUDGE

