



**In re Baby MP (Minor) (Adoption Cause 3 of 2021)
[2021] KEHC 9770 (KLR) (2 September 2021) (Judgment)**

Neutral citation: [2021] KEHC 9770 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 3 OF 2021
JN ONYIEGO, J
SEPTEMBER 2, 2021**

BETWEEN

DMM 1ST APPLICANT

DMM 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. DMM(hereinafter the 1st applicant) and DMM (hereinafter the 2nd applicant) are Kenyan citizens who solemnized their monogamous marriage on April 11, 2009 at AIC Thika. They are relatively a young couple born on October 8, 1980 and March 5, 1986 respectively. The first applicant is an engineer working with [particulars withheld] while the 2nd applicant is an accountant working with [particulars withheld] Kenya. However, the couple has not been blessed with a baby of their own hence the desire to adopt a baby so as to enjoy the role of parenthood.
2. Consequently, *vide* an originating summons dated February 25, 2021 and filed on March 1, 2021, the applicants moved this court seeking orders that; they be authorized to adopt baby MP ; upon adoption , the child be known as MMM; the child be declared a Kenyan citizen; the court to dispense with the consent required under section 158 of the *Children Act*; upon making the adoption order JMM be appointed legal guardian of the child and, the Registrar General to enter the adoption in the adopted children’s register;
3. In support of the application, the applicants filed a verifying affidavit, statement of particulars and relevant materials thereof.
4. Concerning the baby the subject of these proceedings who is estimated to have been born on May 5, 2018, he was found having been abandoned on June 12, 2018.The baby was allegedly left to a good samaritan by an unknown lady at Nairobi CBD near Electricity house.



5. According to investigations and information received from the good Samaritan one Fridah, the unknown lady approached her on the material day requesting her to hold the baby for her as she went to answer a call of nature in a nearby toilet but never returned. The matter was booked at KICC police station *vide* OB No 28/12/06/2018 as well as Kamukunji police station *vide* OB No 33/12/06/2018.
6. The baby was taken to Kenyatta National Hospital for medical checkup by the good samaritan in company of police officers. On August 1, 2018 the baby was discharged and admitted at House of Charity Children's Home. *Vide* protection and care case No 675/2018 Nairobi children's court, the baby was on December 5, 2018 formally committed to the said institution (home).
7. Every effort to trace the mother and or close relative did not bear any positive results. This is confirmed by the police initial and final letters dated June 12, 2018 and February 22, 2019 respectively. The children department and Buckner Kenya Adoption Society's effort was equally futile.
8. Six months having lapsed since the abandonment, the process of adoption commenced. Via its case committee held on June 21, 2019 Buckner Kenya Adoption Society declared the baby free for adoption. A certificate S/No / 0377 was issued to that effect. The child was then placed under the care and control of the applicants on July 12, 2019 for a mandatory three months consecutive period in compliance with section 157 of the *Children Act*.
9. Upon instituting these proceedings, JNM was on April 21, 2021 appointed as a guardian *ad litem* pursuant to a chamber summons dated February 25, 2021. Consequently, the director children services and guardian *ad litem* were directed to file their respective evaluation reports.
10. Prior to the hearing date, the Little Angles Network filed their report dated January 31, 2019 recommending the adoption. The Director Children Services filed his dated May 3, 2020 and the guardian *ad litem* on May 25, 2021 also approving the adoption. They all described the applicants as responsible, caring, loving and financially stable to adopt the baby.
11. During the hearing, the applicants urged the court to grant their prayer. They acknowledged that they understood their parental responsibility towards the baby as well as the consequences of an adoption order.
12. I have considered the summons herein, verifying affidavits, statements and materials in support. I have also considered the evidence of various witnesses vis a vis stake holders' reports. Issues that emerge for determination are;
 - (a) Whether the child is legally available for adoption.
 - (b) Whether the applicants qualify to adopt the baby
 - (c) Whether the adoption is in the best interests of the child.
13. The baby herein was found abandoned while in the hands of a good Samaritan by the mother who requested the good Samaritan to hold the baby for her as she went for a call of nature but never returned. Since June 12, 2018 to date, nobody has turned up to claim the baby. Efforts by the police as evidenced by their initial and final letters aforesaid did not yield any positive results. The Buckner Adoption Services and Children Department's efforts in tracing the parents or close relatives did not succeed. To that extent, the need for consent is hereby dispensed with.
14. Concerning the baby's nationality, article 14 (4) of the *Constitution* provides that, any child found in Kenya and who appear to be less than 8 years of age and whose nationality or parents are not known is presumed to be a Kenyan citizen by birth. In view of the circumstances under which the child was



- abandoned while in the hands of a good samaritan by an unknown person, the child who is presumed to have been one month old then is by dint of article 14 (4) of the Constitution deemed to be a Kenyan citizen by birth.
15. Pursuant to section 157 of the Children Act, any child who is resident in Kenya whether born in Kenya or not is qualified to be adopted. The subject herein is above six weeks old the minimum age requirement for an adoptive parent under section 156 of the Children Act. He has been declared free for adoption. In my view, the child is legally available for adoption.
 16. Touching on the adoptive parent's fitness, they are aged between 25 and 65 years being the minimum and maximum age respectively of an adoptive parent in compliance with section 158 of the Children Act. They are Kenyan citizens thus qualifying the adoption to be a local one.
 17. Besides, the applicants have confirmed that they have understood the consequences of adoption and that it's permanent. They have fully bonded with the child hence separating them with the baby will be unfair to both the child and the applicants. According to the stakeholders' report, the applicants are financially stable with the first applicant earning Kshs 135,000 while the second applicant earns Kshs 60,000. Besides owning landed properties, they are christians with no criminal record thus assuring the baby of proper mentorship and upbringing both morally and socially. I have no doubt the applicants have met the necessary requirements to adopt the baby.
 18. Touching on the critical question of whether the adoption is in the best interests of a child, article 53 (2) of the Constitution and section 42 (2) and (3) of the Children Act are crystal clear. The two provisions are emphatic that before any decision making authority or institution or body makes any decision concerning or affecting a child, the cardinal factor for consideration is the best interests of a child.
 19. In the instant case, the child was abandoned by an unknown woman presumed to be the mother. The motive was to dispose the baby so as to run away from parental responsibility. The child has found a warm home with loving, caring and responsible adoptive parents. The baby is assured of basic necessities like food, shelter, clothing, medical care and education.
 20. In the absence of any biological parent or guardian claiming the baby, this court is left with one option and that is, to allow the applicants' prayer to adopt the baby. This will enable the child acquire generational identity, proper mentorship, psychological and emotional management and parental guidance. He will also have something to inherit in the event he survives the applicants. Taking into account all parameters, the best interests of the child herein leans in favour of granting the prayers sought.
 21. Accordingly, the application is allowed with orders that;
 - (a) The applicants are hereby authorized to adopt baby MP who henceforth shall be known as MMM.
 - (b) The child's date of birth shall be May 5, 2018 and place of birth Nairobi.
 - (c) The consent of biological parents is dispensed with
 - (d) The child is declared a Kenyan citizen
 - (e) The Registrar General to enter the adoption order in the adopted children's register
 - (f) The guardian ad litem is hereby discharged.



- (g) JMM is appointed the legal guardian to the child in the event of any eventuality befalling the applicants.

DATED, SIGNED DELIVERED VIRTUALLY AT MOMBASA THIS 2ND DAY OF SEPTEMBER, 2021.

J. N. ONYIEGO

JUDGE

