



**In re Baby MW also known a BABY EW (Adoption Cause 4 of 2020)
[2021] KEHC 9809 (KLR) (2 September 2021) (Judgment)**

Neutral citation: [2021] KEHC 9809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 4 OF 2020**

JN ONYIEGO, J

SEPTEMBER 2, 2021

**IN THE MATTER OF ADOPTION OF BABY M W ALSO KNOWN
A BABY E W ALSO KNOWN AS ABANDONED MALE –CHILD**

BETWEEN

NIS APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. Through an Originating Summons dated 26th February, 2020, the applicant herein sought orders that the court does declare baby M W also known as baby E W also known as abandoned child a Kenyan citizen ; the requirement for consent be dispensed with; the applicant be authorized to adopt MW also baby EW also known as abandoned baby; upon making adoption order the baby be known as Scolfil Khayumbi Shinali; upon making the adoption order, the Registrar General to enter the record in the adopted children’s register and that, upon making the adoption order, Violet Adema Shinali be appointed as legal guardian of the child.
2. The application is supported by a statement of particulars duly sworn on February 19, 2020 by the applicant. The applicant who a single lady born on November 10, 1979 is a Kenyan citizen. She is a teacher by profession. According to her background social inquiry reports, the applicant once conceived while in secondary school. Upon delivery, the parents took her son away never to be seen again. She has been longing to see the child but to no avail.
3. The motivation to adopt the baby has been prompted by the need to have a family of her own due to her advanced age and health status which may not allow her conceive; she loves children and she wants to open her home to a needy child.



4. Regarding the child believed to have been born on 5th February, 2016, she was abandoned at Coast General Hospital by the mother who absconded after delivery. The matter was reported at Makupa police station vide OB No 43/27/1/2016. A vacancy was secured for the child at Baby Life Rescue Centre Mombasa on February 5, 2016.
5. Subsequently, the children department moved to Tononoka children's court for formal committal which was granted on August 26, 2016 vide protection and care case No 275/2016. Every effort by the Makupa police station to trace the parents and or relatives was futile. This is evidenced by their final letter dated August 17, 2016 confirming that nobody had turned up to claim the baby.
6. Six months having lapsed without anybody claiming the baby, preliminary stages for adoption process commenced pursuant to section 159(1) (a) (i) of the *Children Act*.
7. Consequently, vide its case committee held on 29th July, 2021, Little angles Network declared the child free for adoption. A certificate S/No. 001769 was issued to that effect. The child was subsequently placed under the care and control of the applicant on November 2, 2016 for a consecutive 3 months period pursuant to section 157 of the *Children Act*.
8. Upon instituting these proceedings, one Rosemary Adhiambo Wawiyo was appointed as guardian Ad litem on 23rd September, 2016 pursuant to a Chamber Summons dated 19th February, 2020. The Director Children Services and Guardian Ad litem were directed to file their respective evaluation assessment reports. Subsequently, the children Coordinator Mombasa on behalf of the Director Children Services filed his report dated 26th January, 2021 on April 21, 2021 recommending the adoption. Equally, the guardian Ad litem filed hers on October 12, 2020 also approving the adoption. Earlier on, little Angles network had filed theirs dated July 29, 2016 recommending the adoption.
9. I have considered the summons herein, supporting materials and various witnesses' testimonies. Issues for determination are; whether the child is legally available for adoption; whether the applicant has met the requisite conditions to adopt the baby and, whether the adoption is in the best interests of the child.
10. The child herein was abandoned by the mother at Coast General Hospital after delivery. Every effort to trace her or any close relative has been futile. This is evident from the aforesaid Makupa police station's final report. The child has since been declared free for adoption. Consent from the parents is therefore dispensed with.
11. The child having been abandoned, her nationality can be determined by article 14(4) of the *Constitution* which provides that;

“a child found in Kenya who is, or appears to be less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth”.
12. In view of the above Constitutional imperative, the child is declared to be a Kenyan citizen. Further, Section 157 of the *Children Act* provides;

“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”.
13. In my opinion, the child who is above six weeks being the minimum statutory age for an adoptive baby under section 156 is legally available for adoption.
14. Concerning the suitability of the applicant to adopt the baby, she is a Kenyan citizen thus qualifying the adoption as a local adoption. She is aged above 25 years and below 65 years hence fulfilling the



age bracket for an adoptive parent under section 158 of the children Act. She has been described by all stakeholders as financially stable being a teacher and a business lady at the same time. She is responsible, a loving person with no criminal record, and morally and socially upright.

15. The applicant appreciates the permanent nature of adoption proceedings. She understands and acknowledges the consequences of adoption. She has integrated with the child hence separating the two will be unfair. In my view, she has met the necessary requirements to adopt the baby.

16. Lastly, is the adoption in the best interests of the child? It is trite law that in every decision made concerning a baby whether by a court of law or administrative institution, the best interests of a child must be taken into consideration. This is a constitutional dictate under article 53 (2) of the Constitution, section 4 (2) and (3) of the Children Act and the UN Convention on the rights of a child Article 2 and 3. See MAA v ABS (2018) e KLR where the court stated that;

“What is stated in section 4 (3) (b) of the Act is the paramouncy principle which is vital in all matters concerning children and must be given prominence”

17. There is no doubt the baby was abandoned by a parent who was not bothered to come back and check on her child. The intention was to expose the child to every possible situation of suffering. This can be discerned from the conduct of the baby. Obviously, the child is in need of protection and care, parental guidance, mentorship and, provision of basic necessities like, food, education, clothing and shelter.

18. The child has fully bonded with the adoptive parent and is happy. It will be unfair and unjust to separate the two. In the best interests of the child this application is allowed with orders that;

1. The applicant herein is authorized to adopt baby MW also known as EW who henceforth shall be known as SKS
2. That her date of birth shall be December 29, 2015 and place of birth Mombasa.
3. That consent of the biological parents is dispensed with.
4. The child is declared to be a Kenyan citizen.
5. The guardian *Ad litem* is dispensed with.
6. The Registrar General to enter the adoption order in the adopted children's register
7. VAS a sister to the applicant is appointed as the legal guardian in the event of any calamity befalling the applicant.

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

J. N. ONYIEGO

JUDGE

