



**In Re DW(child) (Adoption Cause 17 of 2018)
[2021] KEHC 9808 (KLR) (2 September 2021) (Judgment)**

Neutral citation: [2021] KEHC 9808 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 17 OF 2018
JN ONYIEGO, J
SEPTEMBER 2, 2021**

IN THE MATTER OF ADOPTION OF BABY DW ALSO KNOWN AS BABY(ACHILD)

BETWEEN

**PM 1ST APPLICANT
FK 2ND APPLICANT**

AND

LITTLE ANGELS NETWORK APPLICANT

JUDGMENT

1. PM (hereinafter the 1st applicant) and FK (hereinafter the second applicant) have approached this court *vide* an originating summons dated September 20, 2018 and filed on September 24, 2021 seeking orders that; they be authorized to adopt baby DW also known as Baby N W also known as unknown baby child; the child be declared a Kenyan citizen under article 14 (4) of the Constitution; consent of the biological parents be dispensed with; upon making the adoption order the child be known as DMP; upon making the adoption order FPJ be appointed legal guardian; the Registrar General do enter the adoption order in the adopted children’s register and the child’s date of birth be August 20, 2007.
2. The application is supported by the statement of particulars jointly sworn on September 20, 2018 by the applicants. The applicants are Kenyan citizens born on February 20, 1967 and March 21, 1968 respectively. They started cohabiting as husband and wife sometime the year 1990 and subsequently solemnized their marriage on August 10, 2011 at the Registrar’s office of Marriages Mombasa. However, the couple has not been blessed with a child of their own hence the desire to adopt a baby.
3. Regarding the child herein, he was born on August 20, 2007 at Coast General Hospital to a lady identified as NW whose residence was given as Msisima and home particulars Dagoretti. That she also gave the name of SR her friend as the next of kin. It was alleged that N disappeared from hospital on August 31, 2007 never to return.



4. The incident was reported at Makupa police station on October 8, 2007 *vide* OB No 29/08/10/07. Meanwhile, on October 17, 2007, the baby was admitted at the new born unit Coast General Hospital for safety. He was discharged from hospital and formally committed to New Life Home Trust Mombasa for protection and care *vide* Mombasa Children’s court care and protection Case No 371 of 2007.
5. She was received at the said home on October 18, 2007 and later transferred to New Life Home Trust Nakuru on December 31, 2009.
6. Despite concerted effort by the police Makupa police station and Little Angles networks in trying to trace the mother to the child or close relative, none came to fruition. This is confirmed by the Makupa police station’s initial letter dated November 30, 2007 and final letters dated May 10, 2008 and November 30, 2009 in which they stated that nobody had turned up to claim the child.
7. The child having remained unclaimed for a period of 6 months, the process of adoption commenced. Through its case committee meeting held on 25th April, 202, Little Angles declared the baby free for adoption. The baby was subsequently placed under the applicants’ custody for care and control for a consecutive three months period pursuant to section 157 of the [Children Act](#).
8. Consequently, these proceedings were instituted culminating to the appointment of SM as the guardian *Ad litem* pursuant to a chamber summons dated September 20, 2018. The Director Children Services and the appointed guardian *Ad litem* were directed to file their respective valuation and assessment reports within 14 days.
9. Prior to the hearing, the children officer filed his report dated May 3, 2021 recommending the adoption. The guardian *Ad litem* also filed his on April 1, 2019 equally recommending the adoption. Little Angles Adoption Society filed theirs dated April 25, 2021 on March 19, 2019.
10. During the hearing, the applicants urged the court to allow their prayer to adopt the baby. They acknowledged and appreciated the consequences of an adoption order and that it was permanent. They further expressed their commitment to take care of the child like they could do to a biological child.
11. I have considered the application, supporting materials, stake holder’s reports and testimony by all witnesses. The only issue that arises for determination is whether the applicants are entitled to the prayers sought.
12. The baby herein was abandoned by the mother about 10 days after delivery at coast general hospital. Since abandonment on August 31, 2007, about 13 years now, nobody has turned up to claim the baby. Police effort to trace the mother or any close relative was futile. This was confirmed by the area chief Tononoka who confirmed that he knew the mother and one S but they had passed on. It is clear from Makupa police station’s initial and final letters aforesaid that the mother couldn’t be traced. There is no doubt, the intention was to get rid of the baby from the mother’s care and attention. Accordingly, the requirement for consent of the biological parent/guardian is dispensed with.
13. The child was declared free for adoption and then placed under the care and control of the applicants on July 26, 2017. Since then, the child has fully intergraded with the applicants. The child is over 6 weeks the minimum age requirement for any adoptive child in compliance with section 156 of the [Children Act](#).
14. Further, under section 157 of the [Children Act](#), any child who is resident in Kenya whether born in Kenya or not is eligible for adoption. Concerning his nationality, article 14 (4) of the [Constitution](#) is clear on that aspect. It provides that, any child under the age of 8 years who is found in Kenya and



whose nationality or parents are not known is presumed to be a citizen by birth. The child herein was abandoned at the age of 11 days hence qualified to be a Kenyan by dint of article 14 (4) of the Constitution. For the reasons stated, the child is legally available for adoption.

15. As to whether the applicants have met the necessary requirements, they are Kenyan citizens thus making the adoption a local one. Further, they are aged between 25 and 65 years being the statutory age bracket for any adoptive parent. As to their mental, social, moral and physical fitness, they have passed the test as recommended by the various stake holders' recommendations in their respective reports and the supporting materials like medical tests and certificate of good conduct. Financially, they are business people engaged in making cakes for supply to small retailers hence earning them a sum of 35,000 per month.
16. They live in a two bedroomed house within Shanzu hence assured accommodation and conducive environment for the minor. The applicants have expressed their appreciation that they will treat the child like their biological child and that they understand the consequences of adoption. I have no doubt they have met the necessary requirements to adopt the baby.
17. Concerning the question whether the adoption is in the best interests of the child, article 53 (2) of the Constitution and section 4 (2) and (3) of the Children Act are critical. The two provisions underscore the paramount principle of the best interests of a child as the primary consideration before making any decision concerning a child.
18. In this case, the child was abandoned at a tender age. He doesn't know any other home nor parents other than the applicants. He has fully bonded with the applicants and it will be unfair to separate them. Further, he is entitled to basic provision like food, shelter, clothing, education and medical care all of which are available if put under the care of the applicants. By all standards, the adoption is in the best interests of the child.
19. Accordingly, the application herein is allowed with orders that;
 1. The applicants are authorized to adopt baby DW also known as NW who henceforth shall be known as DMP.
 2. The child's date of birth shall be August 20, 2007 and place of birth Mombasa.
 3. Consent of the parents/guardian is dispensed with.
 4. The child is declared a Kenyan citizen.
 5. The guardian *Ad litem* is discharged.
 6. The Registrar General is directed to enter the adoption in the adopted children's register
 7. PFJ is appointed as legal guardian for the baby in the event of any eventuality befalling the applicants.

Dated, signed and delivered virtually at Mombasa this 2nd day of September, 2021

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J. N. ONYIEGO

JUDGE

