



**In re Adoption of Baby B (Minor Child) (Adoption Cause 6 of 2019)
[2021] KEHC 9833 (KLR) (12 November 2021) (Judgment)**

Neutral citation: [2021] KEHC 9833 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 6 OF 2019
JN ONYIEGO, J
NOVEMBER 12, 2021
IN THE MATTER OF ADOPTION OF BABY B (MINOR CHILD)**

BETWEEN

PPN 1ST APPLICANT

MK 2ND APPLICANT

AND

CHILD WELFARE SOCIETY OF KENYA RESPONDENT

JUDGMENT

1. Through an originating summons dated April 18, 2019 PPN (hereinafter the 1st applicant) and MK (hereinafter the second applicant) moved to this court pursuant to sections 154,156,157,160,169 and 170 of the *Children Act* seeking:
 - a. That CKM be appointed guardian ad Litem.
 - b. That PNP and MK be authorized to adopt baby BE (minor)
 - c. That the child baby BE be declared a Kenyan citizen.
 - d. That the minor child be named as MPN.
 - e. That the Registrar General be directed to enter the new name of the child in the adopted children's register in the prescribed form.
 - f. That cost of this summons be costs in the cause.
2. The application is supported by a statement of particulars jointly sworn by the applicants on April 18, 2019. The applicants are Kenyan citizens. They are husband and wife aged 69 and 65 years respectively. The couple has been married customarily since the year 2006.



3. For the first applicant, this is the second marriage. The first marriage with the first wife TM has been blessed with eight children all of whom are in support of these adoption proceedings. However, his marriage to the 2nd applicant has not been blessed with any child due to the 2nd applicant's medical complications.
4. The motivation to adopt the baby has been ignited by the desire to have a fruitful marriage complete with children. Further, they expressed their desire to extend their love and support to a needy child by providing a home for him. The first applicant is a retired employee of Kenya Ports Authority while the 2nd applicant is a business lady operating a water supplying joint.
5. Concerning the child the subject of these proceedings, he was found abandoned on the roadside at Kibera Mashimoni area on September 9, 2010. The child was rescued and taken to Kenyatta National Hospital (KNH) by a police officer by the name of Margaret Mwangi of Kilimani police station who also reported and booked the incident vide OB No xx/xx/xx/xxxx.
6. The child was subsequently admitted at Kenyatta National Hospital on the same day and then later discharged on October 12, 2010. He was later admitted at the [particulars withheld] by the Provincial Director Children services Nairobi for temporary care and protection and later formally committed to the same institution vide Nairobi Children care and Protection Case No 62 of 2012.
7. Despite every effort made by the police to trace the mother and or relatives, nothing came to fruition. This is evidenced by the Kilimani Police Station letter dated March 22, 2012. Besides the police, Child Welfare Society of Kenya did carry out investigations in tracing the parents but in vain.
8. The child was later declared free for adoption on August 27, 2019 and a certificate S/No xxxx issued. He was placed under the care and control of the applicants for a mandatory period of 3 months pursuant to section 157 of the [Children Act](#).
9. Six months having lapsed without anybody claiming the baby, adoption commenced. Upon instituting this suit, CKM was appointed a guardian *Ad litem*. Consequently, the Director Children Services and the guardian *Ad litem* were directed to file their respective social inquiry reports.
10. Prior to the hearing, the Director Children Services through Children the County Coordinator Kitui submitted his report disapproving the adoption on grounds that the first applicant is aged 69 years which age is above the maximum recommended statutory age of 65 years. He however invited the court to use its discretion to allow the application on grounds of the best interests of the child. On the other hand, the guardian *Ad litem* filed his report on April 28, 2012 approving the adoption. The child welfare society of Kenya also recommended the adoption through their report filed on November 6, 2019. They all described the applicants as loving and caring and that the child has fully bonded with them.
11. During the hearing, the applicants urged the court to grant their prayers to adopt the child. They confirmed that they are aware of their parental obligations and responsibilities. They also acknowledged and appreciated the consequences of adoption orders and that it is permanent.
12. I have considered the application herein, particulars in support and testimony by various witnesses. The baby herein was found abandoned on the road side. Efforts by the police department Kasarani police station and the child welfare Society Kenya in tracing the parents have not born any fruit. For that reason, the requirement for consent under section 158 and 159 is dispensed with. As to the requirement of minimum age of six weeks before a child is adopted pursuant to section 156 of the [Children Act](#), the subject herein is about 11 years.



13. Concerning his nationality, article 14 (4) of the Constitution is clear to the extent that any child below 8 years who is found within the Republic of Kenya and whose nationality or parents are not known is presumed to be a Kenyan by birth. In view of that provision, the child herein is declared to be a Kenya citizen having been born on September 9, 2019 and found the same day.
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. In view of the above finding, the child has met the criteria for adoption.
15. Regarding the suitability of the applicants, they are Kenyan citizens thus qualifying the adoption as a local one. Concerning their age, the 1st applicant is now 69 yrs old thus exceeding the maximum recommended statutory age of not more than 65 years pursuant to section 158 of the Children Act. However, the second applicant born 1961 is now 60.
16. It is worth noting that it is on account of age of the 1st applicant that the children department disapproved the adoption arrangement. However, section 158 (1) of the Children Act, provides that;
 - “An adoption order maybe made upon the applicant of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants -
 - (a) has attained the age of twenty five years and is at least twenty one years older than the child but has not attained the age of sixty five years or
 2.
 3.
 4.
17. My understanding of the wording under section 58(1) above quoted is that, as long as one of the two joint applicants has not reached 65 years and is not less than 25yrs old, then, the adoption process cannot be disqualified. In this case, only one has passed age 65 years hence the adoption proceedings are within the recommended statutory period by virtue of the second applicant’s age qualification.
18. Touching on their financial position, the 1st applicant has some pension besides managing water supplies business. On average, they are earning appropriately Kshs 30,000 per month which is sufficient to sustain an ordinary Kenyan family set up. Besides, they are mentally fit, caring, loving and Christians with no criminal record. By all standards, they have met the requirements to adopt the baby.
19. On the question whether the adoption is in the best interests of the baby, article 53 (2) of the Constitution is critical. Equally, section 4 (2) and (3) of the Children Act does amplify the constitutional imperative that in every decision made whether by a court of law or administrative institution, the best interests of a child principle is the primary consideration.
20. In the instant case, the baby was abandoned on the roadside. Nobody has laid claim over him. He has no other home except the applicant’s home. He has fully integrated with the family. He is assured of basic necessities like, education, medical care, food, shelter and clothing. In my view, the adoption process is in the best interests of the child.
21. Having held as above, the application is allowed with orders;
 - a. That the applicants herein are authorized to adopt baby BE who shall henceforth be known as MPN.



- b. That the child's date of birth shall be August 7, 2020 and place of birth [particulars withheld] Nairobi County.
- c. That the consent of his biological parents shall be dispensed with.
- d. That the child is declared a Kenyan citizen by birth.
- e. That the guardian *Ad litem* is dispensed with.
- f. That the Registrar General shall enter the adoption order in the adopted children's register.

DATE SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 12TH DAY OF NOVEMBER, 2021.

JN ONYIEGO

JUDGE

