



REPUBLIC OF KENYA



**KENYA LAW**  
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**In Re Baby R (Adoption Cause 7 of 2018)  
[2021] KEHC 9798 (KLR) (12 November 2021) (Judgment)**

Neutral citation: [2021] KEHC 9798 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE 7 OF 2018  
JN ONYIEGO, J  
NOVEMBER 12, 2021**

**BETWEEN**

**BMN ..... 1<sup>ST</sup> APPLICANT**

**RMC ..... 2<sup>ND</sup> APPLICANT**

**AND**

**BUCKNER ADOPTION SERVICE ..... RESPONDENT**

**JUDGMENT**

1. Pursuant to Sections 154, 156, 157, 158, 160, 169, 170 of the *Children Act* and Section 1A, 1B, 3A of the *Civil Procedure Act*, BMN (hereinafter the 1<sup>st</sup> applicant) and RMC (hereinafter the second applicant) moved this court *vide* an Originating Summons dated 24<sup>th</sup> June, 2018 seeking orders:
  - a. That MNK be appointed guardian Ad Litem in this case.
  - b. That BMN and RMC be authorized to jointly adopt baby R (minor child)
  - c. That the child baby R be declared a Kenyan citizen.
  - d. That the name of baby R to change to JLM.
  - e. That the Registrar General be directed to enter the name of the child in the Adopted Children's Register.
  - f. That costs of this summons be costs in the cause.
2. The application is supported by a statement of particulars jointly sworn by the applicants herein on 24<sup>th</sup> May, 2018. The applicants herein born on 12<sup>th</sup> May 1978 and 20<sup>th</sup> May, 1965 respectively are Kenyan citizens. They are husband and wife having celebrated their marriage in church on 18th November,



2006. The 1<sup>st</sup> applicant is a pastor while the second applicant is a nurse by profession. However, they have not been blessed with a baby of their own due to the second applicant's medical complications.
3. Their motivation to adopt the baby has been propelled by the desire to have a complete family, to be parents and to share their love with a child who is legally theirs and by extension get an heir. They also want a needy child have a sense of belonging and a bright future.
  4. Concerning the baby estimated to be one and half years, he was on 17<sup>th</sup> May, 2015 found abandoned at a matatu stage after the mother left him with one KK in the pretext that she was going to make an M-pesa transaction. Having disappeared, Mr K reported the incident at Kasarani police station. The incident was reported *vide* OB No XX/XX/XX/XX. Baby Rocky was then admitted at Happy Life children's home for care and protection.
  5. On 24<sup>th</sup> June 2015 the minor was formally committed to the same home *vide* care and protection case No 135/2015 Nairobi, children's court. Through their letter dated 6<sup>th</sup> May, 2016, Kasarani police station confirmed that nobody had claimed the child since he was abandoned.
  6. Consequently, the child was declared free for adoption on 8<sup>th</sup> July, 2016 by Buckner Kenya adoption Services case committee and a certificate S/No. XXX issued. The child was then placed under the care and control of the applicants on 16<sup>th</sup> June 2017 for a mandatory period of 3 months pursuant to Section 157 of the [Children's Act](#).
  7. Following the institution of these proceedings, MNK was appointed guardian *Ad litem* on 5<sup>th</sup> February, 2020 pursuant to a Chamber Summons dated 24<sup>th</sup> May, 2018. The Director children services and the guardian *Ad litem* were directed to file their respective social inquiry reports.
  8. Consequently, the Director Children Services filed his report on 14<sup>th</sup> June, 2021, recommending the adoption. The guardian *Ad litem* also filed hers on 1<sup>st</sup> November, 2020 approving same. On their part, Buckner Kenya filed theirs on 17<sup>th</sup> September, 2018 also recommending the adoption.
  9. During the hearing, the applicants expressed their love to the child and confirmed having understood the consequences of adoption and that it is permanent.
  10. I have considered the application, supporting materials and evidence by various witnesses. The duty of the court is to firstly, ascertain whether the child meets the criteria for adoption. Secondly, whether the applicants are suitable and thirdly, whether the adoption is in the best interests of the child.
  11. The baby was abandoned in the hands of an innocent by stander at a matatu stage when a lady requested him to hold the baby for her as she allegedly went to do an M-pesa transaction. Unfortunately, the mother to the baby never returned. Despite every effort to trace parents or close relatives, none has been found. This is evidenced by the police letter dated 6<sup>th</sup> May, 2010.
  12. The child has since been declared free for adoption. In the circumstances, the requirement for consent is dispensed with. As to nationality, Article 14 (4) of the [Constitution](#) is quite emphatic that , any child below the age of 8 who is found abandoned within the republic and whose nationality or parents are not known is presumed to be a Kenyan by birth.
  13. 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 my view, the child herein who is above six weeks and below 18 years has met the necessary conditions for adoption.
  14. As to the applicants' suitability to adopt, they are Kenyan citizens who are aged between 25 and below 65 years the age bracket for an adoptive parent pursuant to Section 158 of the [children Act](#). They have been described by stake holders as loving, caring, financially stable and medically fit. They understand



the consequences of adoption and that it's permanent. They have fully bonded with the baby hence to separate them will be detrimental to the baby. This being a local adoption, I am satisfied that they have met the necessary conditions to adopt the baby.

15. With regard to the question whether the adoption is in the best interests of the baby, Article 53 (2) of the Constitution and Section 4 (2) and (3) of the children Act come to play .The two provisions underscore the paramount principle of the best interests of a child as the primary consideration by any institution, court or body before making any decision concerning a baby.
16. The child was abandoned in the hands of an innocent person at a matatu stage. Nobody has since turned up to claim the baby. The child has since integrated with the adoptive parents. Like any other ordinary person, he is in need of parental care and love. He needs basic provision like food, medical care, shelter and clothing. Above all, he needs generational identity, mentorship and a bright future. In my view, the adoption is in the best interests of the baby.
17. Accordingly, I do allow the adoption and make orders as follows;
  - a. The applicants herein BMN and RMC are hereby authorized to adopt baby R who hereinafter shall be known as JLM
  - b. That his date of birth shall be 8<sup>th</sup> October, 2014 and place of birth Kasarani Nairobi County
  - c. That consent of his biological parents is dispensed with
  - d. That the child is declared a Kenyan citizen.
  - e. That the guardian *Ad litem* is discharged.
  - f. The Registrar General is directed to enter the adoption order in the adopted children's register
  - g. That JM and LM are appointed as legal guardians to the baby in the event of any eventuality befalling the applicants.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2021**

**J.N ONYIEGO**

**JUDGE**

