



**In re ED (Minor) (Adoption Cause 2 of 2021)
[2021] KEHC 9781 (KLR) (12 November 2021) (Judgment)**

Neutral citation: [2021] KEHC 9781 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 2 OF 2021
JN ONYIEGO, J
NOVEMBER 12, 2021**

BETWEEN

HMM APPLICANT

AND

LITTLE ANGELES NETWORK RESPONDENT

JUDGMENT

1. HMM ,herein referred to as the applicant came to this court through an Originating summons dated 22nd February, 2021 seeking orders interia; that this court does declare the minor herein E.D alias E.O a Kenyan citizen; that consent requirement pursuant to Section 159 of the *Children Act* be dispensed with; the applicant be authorized to adopt baby E D alias E O; upon making the adoption order the child be known as ECM ;upon making the adoption order SNM be appointed legal guardian of the child; that the Registrar General do enter the adoption order and the 7th June, 2010 as the date of birth in the adopted children’s register.
2. In support of the application, the applicant executed a statement of particulars sworn on 22nd February,2012 attaching various documents.
3. The applicant is a Kenyan citizen by birth. She was born on 9th June, 1969. She is single and a teacher by profession. Unfortunately, she has not been blessed by any biological child due to medical complications. Her motivation to adopt the baby has been prompted by the desire to make a difference in a child’s life by providing a needy child with a home. She also intends to bring up a child in a Christian faith.
4. Regarding the child herein estimated to have been born on 7th June, 2010, she was found abandoned on the road side on 14th December, 2010. Besides her, there was a paper bag with few dirty clothes. The good Samaritan by the name of E rescued the baby and reported the incident at Mtwapa police



- station *vide* OB No. 05/05/01/2011. Subsequently, the child was formally committed to the good Life Orphanage on 26th May, 2011 by Kilifi Children’s court *vide* Protection and Care case No 457/2011.
5. Despite every effort made by the police and children department in tracing the parents and or close relatives to the baby nothing positive came out of it. This is evidenced by the police final letter dated 17th February, 2014 confirming that nobody has ever turned up to claim the baby.
 6. Having remained unclaimed for over six months, the process of adoption commenced. Through Little Angles Network case committee held on 28th May, 2014, the child was declared free for adoption and a certificate S/No. 0014xx issued to that effect. The subject was then placed under the care and control of the applicant on 10th April, 2017 pursuant to Section 157 of the *Children Act*.
 7. Upon intuition of these proceedings, KHJ was on 21st April 2021, appointed as guardian *Ad litem* pursuant to a Chamber Summons dated 22nd February, 2021. The Director Children Services and the guardian *Ad litem* were directed to carry out a social inquiry and file an evaluation and assessment report.
 8. Consequently, Little Angles filed their report on 15th April, 2021 recommending the adoption. The Director Children Services through the County Children Coordinator Taita Taveta filed his on 26th May, 2021 also recommending the adoption. On 25th May, 2021, the guardian *Ad litem* filed his report approving the adoption. Both stake holders described the applicant as friendly and mentally fit, loving, caring and a Christian with no criminal record.
 9. During the hearing, the applicant acknowledged that she understood the consequences of adoption and that it is permanent.
 10. I have considered the application herein, affidavit in support and the evidence by all witnesses.
 11. There is no dispute that the child was found abandoned on the roadside by an unknown person. We can only assume that the act of abandonment may have been made by a parent. Under Article 14(4) of the *Constitution*, any child below the age of 8 years found within the republic and whose nationality or parents are not known is presumed to be a Kenyan by birth. The baby who is estimated to have been born on 7th June, 2010 was found on 14th December, 2010. She is therefore presumed to be a Kenyan by birth.
 12. Since nobody has turned up to claim the baby, the requirement of consent pursuant to Section 158 and 159 of the *Children Act* is dispensed with. The child has since been declared free for adoption and subsequently placed under the care and control of the applicant for a mandatory period of 3 months pursuant to Section 157 of the *Children Act*. This being a local adoption, and the child being a resident in Kenya in compliance with Section 157 of the *Children Act*, I am satisfied that the child is fit for adoption.
 13. Concerning the aspect whether the applicant is suitable to adopt the baby, the court is duty bound to first look at her gender. She is a female seeking to adopt a female child. She is aged between 25 and 55 years which age falls within the age bracket for any adoptive parent pursuant to Section 158 of the *children Act*.
 14. Financially and mentally, she has been described as stable. She is a teacher by profession earning approximately Kshs 70,000 per month. She has a medical cover both for herself and the child. She also has a commercial plot and a farm in Taita Taveta. With this financial position, the child is assured of basic provision like food, clothing, shelter, medical care. Besides, the mother is a Kenyan citizen thus qualifying the adoption as local one. She has expressed her appreciation and understanding that the adoption is permanent and that the child shall have a right to inherit her property. The child has



fully integrated with the applicant and her extended family who are supporting the adoption process. Accordingly, I am satisfied that the applicant is fit to adopt the baby.

15. As to 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 commands that, before any decision affecting a child is made, anybody, institution or court of law making such decision must take into consideration the paramount principle of the best interests of a child.
16. In this case, the child was abandoned and nobody according to the police and children officer has turned up to claim her. Since 2010 when she was abandoned, she has not known any other home other than the one provided by the applicant since 2017. The child has duly bonded with the applicant. Returning her to the children's home will be more punitive and disastrous in her life. She needs a home, generational identity, mentorship, parental guidance, plus provision of basic necessities.
17. In a nutshell, the adoption process herein is in best interests of the child. Accordingly, I am inclined to allow the application and make orders as follows;
 1. The applicant herein HMM is hereby authorized to adopt baby ED also known as ED who shall hence forth be known as ECM.
 2. That the child's date of birth shall be 7th June, 2010 and place of birth Mtwapa Kilifi County.
 3. That the consent of her biological parent is dispensed with.
 4. The child is declared a Kenyan citizen.
 5. The guardian *ad litem* is dispensed.
 6. The Registrar General to enter the adoption order in the adopted children's register.
 7. That M/s SNM is appointed as the legal guardian to the child in the event of any eventuality befalling the applicant.

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

J. N.ONYIEGO

JUDGE

