



**In re Baby AA aka DM (A Child) (Adoption Cause E024 of 2024)  
[2025] KEHC 5686 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5686 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADOPTION CAUSE E024 OF 2024**

**G MUTAI, J**

**APRIL 30, 2025**

**N THE MATTER OF THE CHILDREN ACT, NO 29 OF 2022**

**AND**

**IN THE MATTER OF THE BABY AA AKA DM**

**(A CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION**

**OF BABY AA AKA DM (A CHILD) BY**

**ERMK**

**IN THE MATTER OF**

**ERMK ..... APPLICANT**

**JUDGMENT**

1. Before the court is an Originating Summons dated 2<sup>nd</sup> December 2024, *vide* which the applicant, ERMK, seeks the following orders:-
  - a. That SST, who is a resident of Mombasa County in the Republic of Kenya, be appointed a guardian-ad-litem for the child Annie Amani;
  - b. That the applicant be authorized to adopt the child AA, to be known as DM;
  - c. That the Registrar General be directed to make the appropriate entries in the Adopted Children Register to reflect the child's legal identity;
  - d. That a formal adoption order as required under the *Children Act* do issue;



- e. That BKS and DM be appointed the legal guardians of the child in the event of the death or any incapacitation of the part of the Applicant before the child is of full age and fully self-reliant; and
  - f. That the court be pleased to make any further orders if it deems necessary.
2. In the affidavit in support of the application, the Applicant averred that she was a 37-year-old female adult of sound mind. She is single and has no biological children of her own. Ms K works for the Taita Taveta County Government as a [particulars withheld], a position which is permanent and pensionable. The Applicant is described as being financially stable and thus able to provide for the child.
  3. According to her affidavit, the Applicant was assessed by Little Angels Network, an adoption society and was approved for adoption as evidenced by the report she attached to her application.
  4. The Applicant averred that she has no criminal record and is physically and emotionally fit to adopt the child.
  5. If the application is successful, the Applicant proposes renaming the child as DM. Ms K understands that adoption is permanent and that the adopted child will have a right to inherit her property upon her (Applicant's) demise.
  6. The child, the subject of these proceedings, is presumed to have been born on 15<sup>th</sup> June 2022. She was found abandoned in a pit latrine on 15<sup>th</sup> June 2022 at Mutuati Town. The person who rescued the child reported the matter to the Maua Police Station, but was not issued with an OB Number as the police officers insisted that the child be treated first. The child was admitted to Nyambene Sub-County Hospital for medical attention.
  7. After being treated at the said hospital for over one month, the child was handed to Neema House Infant Rescue Centre.
  8. The child was committed to the children's home on 25<sup>th</sup> July 2022 by the Maua Children's Court *vide* Care & Protection Cause No. E027 of 2022 for 1 year. She remained in the said institution until she was delivered into the care of the Applicant following the signing of the Foster Care Agreement.
  9. Despite the passage of time, the biological parents of the child or relatives have not been traced. No reports have been received by the police or any person or institution of authority regarding any claim for the child.
  10. The Little Angels Network, upon carrying out assessments, stated that the child needs alternative family care and stands to benefit from family love, care and provision, as opposed to being in an institutional home. They therefore recommended adoption. The certificate freeing the child for adoption has serial number 002XXX.
  11. The guardian-ad-litem was appointed on 23<sup>rd</sup> January 2025 after she testified in open court. Ms SST is a high school teacher at [name withheld]Boys High School, Kitale. The court ordered her and the Directorate of Children's Services of Taita Taveta County to conduct a social enquiry and to write their respective reports within 30 days from the date thereof. The matter was fixed for hearing on 27<sup>th</sup> February 2025. The matter was heard on 27<sup>th</sup> February and 23<sup>rd</sup> April 2025. A total of six witnesses testified.
  12. I will summarize the witness testimonies in the succeeding paragraphs of this Judgment.



13. The first witness was Mr Mbitio Mvurya. Mr Mvurya is the Children Coordinator, Taita Taveta County. He testified that he visited the home of the applicant at Voi to assess her suitability as an adoptive parent. His findings were that the home environment was conducive to the child's development. He testified that family members were supportive of the proposed adoption.
14. The second witness was Ms Esther Kalee. She is a programs officer with the Little Angels Network, the adoption agency that freed the child and assessed the Applicant's suitability. Ms Kalee testified that they assessed the Applicant and were satisfied that she is a suitable adoptive parent. She recommended the adoption.
15. Mr BKS was the third witness. He is the father of the Applicant. Mr S was previously a clergyman with the ACK, Diocese of Mombasa. Mr S is the proposed legal guardian. He testified that he was aware of the duties of the legal guardian and had voluntarily offered himself. He undertook to protect the child.
16. Mr S's wife, DMK, also the Applicant's mother, testified as the fourth witness. She, together with Bryson, is the proposed guardian ad litem. She, too, testified that she was aware of the role of the legal guardian. She undertook to stand in the place of the mother in the event that the said adoptive mother was absent or died.
17. ERMK was the 5<sup>th</sup> witness. She testified that she is a senior counsellor working for the county government of Taita Taveta. She produced her statement and the supplementary statements. Ms E, when questioned by the court, stated that she knew that adoption was permanent and that the child would inherit her property.
18. The sixth witness was Ms SST. Ms T teaches at [particulars withheld] Boys High School, Kitale. This court appointed her as the guardian ad litem. Ms Thoya testified that on 12<sup>th</sup> April 2025, she visited the applicant. It was her testimony that the Applicant lives in a good environment. After visiting the Applicant, she prepared a report which I have since perused. She, too, recommended the adoption.
19. I have considered the application, supporting documents, and the various witnesses' evidence. The issues that emerge for determination are whether the child is available for adoption, if the Applicant is fit to adopt the baby, and, most importantly, whether the adoption is in the child's best interests.
20. I have already set out the circumstances under which the child was found. She is presumed to have been born on 15<sup>th</sup> June 2022. She was found abandoned in a pit latrine on 15<sup>th</sup> June 2022 at Mutuati Town. The person who rescued the child reported the matter to the Maua Police Station, but was not issued with an OB Number as the police officers insisted that the child be treated first. At the time she was abandoned, the child was newly born. Attempts to trace her parents have been unsuccessful. Nobody has come forward to claim the child despite efforts made. Given the period that has elapsed since the said occurrence, it is most unlikely that the biological parents of the child will ever turn up. Therefore, the need for consent pursuant to sections 186(8) and 187 of the *Children Act* 2022 is dispensed with. I am guided by the case of *In re HN (Baby)* [2020] eKLR, where the court stated that:-

“As there is nobody laying claim over the baby, the requirement for consent is hereby dispensed with pursuant to Section 159(1) of the *Children's Act*. In view of the above consideration, it is my finding that the child is available and suitable for adoption.”
21. Regarding the baby's nationality, the evidence adduced shows that she was found abandoned immediately after birth. Article 14(4) of the *Constitution* of Kenya, 2010 states that a child under eight years of age whose nationality and parents are unknown is presumed to be a Kenyan citizen by birth. Given this provision, the child herein is presumed to be a Kenyan citizen by birth.



22. Regarding age, the child is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive baby under Section 184 (b) of the [Children Act](#), 2022. Further, Section 185(1) of the said [Act](#) states that any child who is a resident of Kenya, whether born in Kenya or not, is eligible for adoption. I do not doubt that the child is fit for adoption.
23. Concerning the Applicant's suitability, she is a Kenyan citizen aged 37, at the time of this judgment, which places her within the age bracket of not less than 25 years nor more than 65 years for an adoptive parent in compliance with Section 186(2) of the [Children Act](#), 2022. From the records I have seen, the Applicant has the means to care for the child they are adopting. She has no criminal record. Since the placement of the child in her custody, the child has fully bonded with her. The Applicant understands the consequences of adoption and knows that it is permanent once an adoption order is made.
24. Consequently, I do not doubt that she meets the requirements to adopt the baby. I am guided by the case of [In re B \(Baby\)](#) [2018] eKLR, where the court stated:-
- “I am of the considered view that weighing all factors and the evidence placed before me, the applicants are of sufficient ability to bring up the child and to furnish her with appropriate support and maintenance within their resource base available to them.”
25. On the question of whether the adoption is in the best interests of the baby, I am guided by Article 53(2) of the [Constitution](#) of Kenya, 2010 and Section 8(1) and (2) of the Children Act, 2022 which underscores the best interests of a child as the primary consideration before making any decision concerning a baby.
26. Further, the court in the case of [In re MA \(Baby\)](#) [2021] eKLR stated:-
- “This court, in the case of [In re B \(Baby\)](#) [2018] eKLR, held that the purpose of Kenya's [Constitution](#) and [Children's Act](#) is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern, therefore, in every adoption cause is the best interest of that very child.”
27. The child herein was found abandoned. She, therefore, needs necessities like food, shelter, education and clothing. She has fully integrated with the Applicant. It is obviously in the child's best interests that this adoption application is allowed. I am guided by the case of [In re IK \(Child\)](#) [2020] eKLR, where the court stated:-
- “She needs parental care to grow up as a normal child with emotional and physical protection, which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and well-being of the child. As the Constitution and the law state, in all matters concerning a child, the child's best interests are paramount.”
28. In my view, the adoption application has merit. I therefore issue the following orders:-
- a. I declare the child, Baby AA aka DM, a Kenyan citizen by birth;
  - b. I dispense with the consent of the biological parents to this adoption since baby AA aka DM was abandoned immediately after birth by the mother, and the whereabouts of the father is not known;
  - c. The applicant ERMK is hereby authorized to adopt Baby Annie Amani aka Deborah Mghoi;



- d. Baby AA, aka DM, shall henceforth be known as DM;
  - e. I appoint BKS and DMK as the legal guardians of DM and entrust them with the responsibility of taking care of the child in the event the Applicant dies or is otherwise permanently unable to take care of her before she attains the age of majority;
  - f. The Registrar General is hereby ordered to make an entry recording the adoption order herein and the date of birth of DM as being 15<sup>th</sup> June 2022, in the Adopted Children Register as provided for by Section 201 of the *Children Act*, 2011;
  - g. The guardian-ad-litem, SST, is hereby discharged.
29. I make no orders regarding costs as this is a non-contentious adoption matter.
30. Orders accordingly.

**DATED AND SIGNED IN MOMBASA THIS 30<sup>TH</sup> DAY OF APRIL 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr Titus Musembi, for the Applicant; and

Arthur – Court Assistant.

