



In re Adoption of Abandoned New Born Baby alias MJ (The Child) (Adoption Cause E008 of 2025) [2025] KEHC 11342 (KLR) (29 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11342 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E008 OF 2025
G MUTAI, J
JULY 29, 2025
IN THE MATTER OF THE CHILDREN ACT, 2022
AND
IN THE MATTER OF ABANDONED NEW BORN BABY ALIAS
MJ (THE CHILD)
IN THE MATTER OF AN APPLICATION FOR ORDERS OF
ADOPTION OF ABANDONED NEW BORN BABY ALIAS J
(THE CHILD) BY MR GMM AND MRS
FMM (THE JOINT APPLICANTS)**

BETWEEN

GMM 1ST APPLICANT

FMM 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. The joint applicants herein moved this honourable court vide Originating Summons dated 22nd May 2025, seeking orders that:-
 - a. Pursuant to Article 14(4) of the Constitution of Kenya, 2010 and Section 7(1) of the Children Act, 2022, this honourable court be pleased to declare Abandoned New Born Baby alias MJ (the Child) a Kenyan citizen by birth;



- b. Pursuant to the provisions of Section 187 of the *Children Act*, 2022, this honourable court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of Section 186 of the *Children Act*, 2022;
 - c. The applicants, GMM and FMM, be authorised to adopt Abandoned New Born Baby alias MJ (the Child);
 - d. Upon the making of the adoption order, the child be known as NMM;
 - e. Upon the making of the adoption order, HMM and DCM be appointed legal guardians of the child as provided for by the provisions of Section 195 of the *Children Act*, 2022;
 - f. Upon the making of the adoption order, the Registrar General do make an entry in the Adopted Children Register and the estimated date of birth of the child as 18th May 2023, as provided for by Section 201 of the *Children Act*, 2022; and
 - g. The costs of this application be costs in the cause.
2. The application is supported by the averments in the statement in support, sworn on 22nd May 2025. The applicants are adult Kenyan citizens born in 1972 and 1977, respectively. They are married to each other. Their union has not, however, been blessed with biological children of their own; however, F has a daughter, MJW, from her previous relationship, who has given her consent to the adoption. The motivation to adopt Abandoned New Born Baby alias MJ, has been ignited by the desire to be parents, to care for, protect and love a child, to expand their family and have another child who will inherit their wealth together with M. Regarding their occupation, the applicants are respectively a machine operator and a sales assistant.
 3. The child is estimated to be born on 18th May 2023. He was found abandoned beside the road along the Mai-Mahiu-Narok road at Ntulele Trading Centre on 6th June 2023 and was rescued by three good Samaritans, namely John Mereu, M Ololodapash, and Rose Sikuku. The matter was reported at Ntulele Police Station and booked in the Occurrence Book under OB entry number 37/x/x/2023. The child was then referred to Ntulele Dispensary for examination and treatment and later transferred to Narok County Referral Hospital for care and custody pending placement at a children's home. The child was committed to the legal custody of the Nest Children's Home by the Senior Resident Magistrate at Narok Law Courts, vide Care and Protection Number E049 of 2023.
 4. The Case Committee of the Little Angels Network, an adoption agency, in its sitting on 5th February 2025, declared the child free for adoption and issued a Certificate S/No.xxx to that effect.
 5. The joint applicants filed together with the Originating Summons a Chamber Summons application dated 22nd May 2025, vide which they sought to have LKW appointed as a guardian ad litem in respect of these adoption proceedings. After hearing the testimony of the said person, this Court, on 28th May 2025, appointed LKW as the guardian ad litem in respect of these adoption proceedings. The County Director of Children's Services, through the Children's Department in Mombasa, and the guardian ad litem were directed to file their respective social inquiry reports within 30 days.
 6. Preceding the hearing, the County Children Coordinator of Mombasa County filed his report dated 14th July 2025, recommending the adoption. In a similar vein, the guardian ad litem filed her report on 21st July 2025, recommending adoption.
 7. During the hearing, the joint applicants presented six witnesses. I will provide a summary of their evidence below.



8. Joshua Mwalimu Wambua, a social worker employed by the Little Angels Network, testified that they assessed and approved the applicants. It was his evidence that they prepared a report freeing the child for adoption, which is dated 3rd July 2024. The certificate freeing the child for adoption is dated 3rd July 2024 and bears Serial No.xxx. The report assessing the applicants is dated 5th July 2023. He recommended the adoption.
9. Louisa Kemuma, a children officer at the Regional Office, Mombasa, appearing on behalf of the County Director of Children Services, was the second witness. She testified that upon the receipt of the court order, they conducted a home visit on 20th June 2025, and filed a report dated 14th July 2025. During their visit, they found the child had bonded well with the applicants, was playful, and the female applicant's daughter confirmed knowledge of the adoption and her acceptance of the child as a young brother. She further testified that the applicants qualify as adoptive parents as they met all the legal requirements. Ms Kemuma stated that they were recommending the adoption in favour of the applicants.
10. MS, the female applicant's daughter, was the third witness. She stated that she was aware of the adoption proceedings and is okay with the adoption of the child herein.
11. FMM, the proposed adoptive mother, told the court that she has been married to G since 2010. It was her evidence that she was willing to adopt the child herein. She testified that she has a daughter, MS, who is 23 years old. Further, she was aware that adoption is permanent and the baby will have the right to inherit her property. Ms M testified that they intend to bring up the child as a Christian. When asked what she would do if the child became difficult, she stated that if he errs, they shall counsel him. It was her evidence that they had proposed legal guardians, and the first legal guardian is her husband's brother.
12. The 1st applicant, GMM, was the fifth witness. The proposed adoptive father testified that he has been married to F for more than ten years. Their wish is to adopt baby M. He, too, was aware that the child would have the right to inherit their wealth. He is also aware that adoption is permanent and cannot be reversed. He stated that they would advise the child that he is adopted once he is old enough.
13. LKW, the guardian ad litem, testified that she visited the proposed adoptive parents and the child herein three times. During the first visit, the baby was playing. On the second visit, she found him sleeping. On the third visit, they went to church together. It was her evidence that the applicants have bonded well with the child. In the report she presented to the court, she recommended the adoption.
14. I have considered the application herein, materials in support thereof and the evidence presented by various witnesses. The issues that need to be determined are: whether the baby is available for adoption, whether the applicants are suitable to adopt the baby, and, most importantly, whether the adoption is in the best interest of the child.
15. As already stated, the baby herein was born on 18th May 2023. The circumstances under which he was found have already been set out and won't be rehashed. The child was placed with the applicants on 2nd September 2024. They have since played the role of father and mother to him. He has been under their care since he was one year, three months, and 15 days old. Nobody has come forward to claim the child; therefore, the need for consent pursuant to sections 186 and 187 of the [Children Act, 2022](#),



is dispensed with. I am guided by the case of *In re Baby JG (A Child)* [2023] KEHC 22702 (KLR) where the court stated that:-

“It is noted that this was a case of abandonment; therefore, the consent of the biological parents shall be dispensed with, whereas the consent of the proposed legal guardians has been duly filed.”

16. Regarding the baby’s nationality, it is clear that the baby was found abandoned along the Mai-Mahiu-Narok Road at Ntulele trading centre within the Republic of Kenya. the *Constitution* in Article 14(4) thereof recognises that a child who is less than 8 years of age, and whose nationality and parents are not known, is presumed to be a Kenyan citizen by birth. Given this provision, the child herein is presumed to be a Kenyan citizen by birth.
17. In terms of age, the child is above 6 weeks and below 18 years, which provision falls within the age bracket of any adoptive baby pursuant to Section 184 (1)(b) of the *Children Act*, 2022. Furthermore, Section 185 of the said Act recognizes any child who is a resident in Kenya, whether born in Kenya or not, as eligible for adoption. I have no doubt the child is fit for adoption.
18. Concerning the applicants’ suitability, they are Kenyan citizens aged 53 and 48 years respectively, which places them under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with Section 186 of the *Children Act*, 2022. The applicants have been described as financially stable, with an average income of Kes.35,738/- and Kes.32,000/- net pay, respectively. They also have an acre of undeveloped land in Taita Taveta, as well as another acre in the said county where they farm maize and have built a three-bedroom house. The female applicant also sells tea leaves and goat meat, which gives her an average income of Kes.900/- weekly. They have been described as caring, loving Christian individuals with no criminal record. Since the placement of the minor into their custody, the child has fully bonded with them. They also understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and admit they will treat the child like their biological child.
19. Consequently, I do not doubt that they have met the requirements to adopt the child. I am guided by the case of the court stated that:-

In re of GW (Baby) [2021] KEHC 1220 (KLR) where

“The Court finds that it is in the best interests of the child to make the adoption order; that the Applicants are suitable, qualified and able adoptive parents who understand the nature of the adoption process and agree to give effect to the child’s ensuing rights; and that the child and the Applicants have bonded well as a family together with the Applicants’ own biological children, and the Applicants’ extended family and friends support the adoption.”

20. On the question of whether the adoption is in the best interests of the child, I am guided by Article 53(2) of the *Constitution* and Section 8(1) and (2) of The Children’s Act 2022 which underscores the best interests of a child principal as the primary consideration before making any decision concerning a baby.
21. The child herein was found abandoned along the Mai-Mahiu-Narok road at Ntulele trading centre. He needs necessities like food, shelter, education and clothing. He has fully integrated with the applicants.



It is obviously in the best interests of the child that this adoption application be allowed. I am guided by the case *In re AA (Child)* [2021] KEHC 9294 (KLR) where the court stated that:-

“ Article 53 (2) of the Constitution emphasizes that the best interest of the child is paramount. The child will have a family and a home if the orders are granted. The applicants are willing and ready to give parental guidance and a loving home and family to the child.”

22. In my view, the application has merit. Consequently, I allow the Originating Summons and issue the following orders:-
- a. Abandoned New Born Baby alias MJ (the Child) is hereby declared a Kenyan citizen by birth;
 - b. The consent of the biological parents or guardians of Abandoned New Born Baby, alias MJ (the Child), is dispensed with;
 - c. The joint applicants are authorized to adopt Abandoned New Born Baby alias MJ (the Child), who shall henceforth be known as NMM;
 - d. HMM and DCM are hereby appointed the legal guardians of the minor and entrusted with the responsibility of taking care of NMM, in the event that the joint applicants die or are otherwise permanently unable to take care of him before he attains the age of majority;
 - e. The Registrar General is hereby ordered to make an entry recording the adoption order herein and the date of birth of NMM as being 18th May 2023, in the Adopted Children Register as provided for by Section 201 of the Children Act, 2022; and
 - f. The guardian-ad-litem, LKW, is hereby discharged;
23. I make no orders regarding costs as this is a non-contentious adoption matter.
24. Orders accordingly.

DATED AND SIGNED IN MOMBASA, THIS 29TH DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

Gregory Mutai

JUDGE

In the presence of:-

Ms Ngugi, for the Joint Applicants; and

Arthur – Court Assistant.

