



**In re Baby MW (Child) (Adoption Cause E017 of 2021)
[2024] KEHC 3616 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 3616 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E017 OF 2021
MW MUIGAI, J
FEBRUARY 29, 2024
IN THE MATTER OF CHILDREN ACT 2022
AND
IN THE MATTER OF BABY MW (CHILD)
BY
ADM.....1ST APPLICANT
ANM.....2ND APPLICANT**

JUDGMENT

1. The Applicants herein, ADM – ID. Number 208XXXX and ANM - ID. Number 307XXXX (“the Applicants”) sought by their application to be allowed by this Court to adopt Baby MW (hereafter “the child”).
2. Vide Originating Summons application dated 19th August, 2021 the Applicants sought among other orders; that the Applicants herein ADM and ANM be authorized to adopt baby MW an infant who is to be known as MAD; that the child’s date and place of birth be declared to be 21st August, 2018 at Langalanga, Nakuru County; that the child be presumed to be a Kenyan citizen by birth, and consequently entitled to all the rights and benefits in respect thereof; that the consent of the child’s biological parents/guardians be dispensed with; that JMM and JWM be appointed as the Legal Guardians in the event that the Applicants herein are incapacitated or unable to discharge their parental obligations of the child upon the granting of the Adoption Order.
3. The Applicants herein further sought orders; that JN be appointed as the Guardian Ad Litem in this cause and that this Court directs the Department of Children’s Services, Machakos (Athi River) to compile a requisite Report on the Applicants fitness to adopt the Baby MW under the *Children’s Act*. JN of ID No.244XXXX was appointed by this Court as the Guardian Ad Litem on 20/04/2023.
4. The child (MW) the subject of the present adoption proceedings was presumably born on 21st August, 2018 in Nakuru. The child was found having been abandoned at Ngamia Guest House at Langalanga.



- The matter was reported to Bondeni Police Station vide OB No.25/21/8/2018. The child was later taken to the Provincial General Hospital Nakuru. The County Children’s Officer Nakuru sought a vacancy for the minor at New Life Home Trust – Nakuru for care and protection and the minor was admitted at the said home on 6th September, 2018.
5. The minor was committed to New Life Home Trust – Nakuru for Care and Protection at the Nakuru Children’s Court on 17th October, 2018 vide Protection and Care Case No. 115 of 2018.
 6. The Bondeni Police Station in their final Police letter dated 27th February, 2019 confirmed that no one came forward to claim the child and their efforts to trace the kindred of the child have been futile.
 7. The New Life Home Trust – Nakuru reported that during the child stay in the Institution that no parents or relative had ever turned up to claim the child and neither have they ever received any information from the police department concerning the minor. The minor stayed in the home until 20th September, 2019 (a period of six months) when he was placed under the care and control of Mr & Mrs ADM (the Applicants herein). The minor was freed for adoption by the Kenya Children’s Home Adoption Society’s Case Committee on its sitting of 21st March, 2019 vide Certificate Declaring Child Free for Adoption Serial No.15XXXX.
 8. The following documents were availed from Kenya Children’s Homes Adoption Society for baby MW.
 1. Birth Notification serial No. 4452XXXX
 2. Initial Police Letter from Bondeni Police Station
 3. Referral letter by the Sub-County Children’s Officer – Nakuru.
 4. Discharge summary from the Provincial General Hospital Nakuru
 5. Admission Form
 6. Baby assessment form
 7. Children’s Officer Report
 8. Committal order
 9. Final police letter from Bondeni Police Station
 10. Final report by the Sub-County Children’s officer
 11. Child freeing summary from Kenya Children’s Home
 12. Certificate of declaring a child free for adoption Serial No.15XXXX.
 9. The Applicants herein ADM and ANM are currently residents of Blue Triangle village Portland Staff Quarters, Mavoko Sub-County within Machakos County. They are husband and wife - married on 22/02/2018 as per attached copy of marriage certificate Serial Number 301XXXX The Applicants annexed the following documents in support of their application; Applicants copies of Identification cards Certificate of Marriage Financial statement Medical Reports for both Applicants Police clearance Certificates for both Applicants County government single Business Permit Letters of Referees Legal Guardians letter of Consent and copies of their Identity Cards. Certificate of acknowledgement
 10. Pursuant to the *Children Act*, Kenya Children’s Home Adoption Society, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the Applicants.



11. The Guardian Ad Litem, JN ID No.244XXXX also filed the statutory Report in which he noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
12. The Buckner Kenya Adoption Services filed their report dated 5th October, 2021 in Court on 8th October, 2021. Mr. Alex Malala from the Society appeared in Court on 24/10/2023 in respect of these Adoption Proceedings. He told the Court that the baby MW was found abandoned at a guest house in Langa Langa in Nakuru and matter reported to Police vide OB No.25/21/8/2018. Later the Children Officer secured a vacancy at New Life Home Trust and the minor was admitted on 6/09/2019. Later baby MW was committed at the same home by Nakuru Children Court. The Applicants herein approached the Society on 5/12/2017 and approved by Committee on 21/06/2019. The Applicants were placed with the baby MW the child herein on 20/09/2019. Prior to the placement the child was freed for Adoption on 21/03/2019 vide Certificate Declaring child free for Adoption Serial No.15XXXX.
13. According to the Report the Applicants made a joint adoption application to Kenya Children's Home Adoption Society on 5th December, 2017 and it was their 1st adoption. The Applicants applied to be placed with a baby boy of less than one year. Relevant interviews and home assessment were carried out as well as the pre-adoption counselling. The Applicants were found eligible and a case Committee sitting on 21st June 2019 approved their application and were placed with the baby MW on 20/09/2019. The Applicants are a couple having been married on 2003 and later legalized their marriage on 22nd February, 2018 vide Certificate of Marriage Serial No.301XXXX. The Applicants have not been blessed with a biological child of their own due to health issues. Their motivation towards adoption is due to their desire to become parents.
14. The Applicants lives at Blue Triangle village Portland staff quarters a secure neighbourhood with supply of water and electricity. The Applicants are confirmed to be of good general health (medical reports are attached), they do not have Criminal Record (Police clearance reports attached). The Applicants are Christians fellowshipping at St. [Particulars Withheld] Catholic Church. The Applicants extended family are supportive of the Adoption whereby the Applicants have appointed JMM and JWM the 2nd Applicants sister and brother in law as the proposed Legal Guardians of the child. They have accepted to be the Legal Guardians and confirmed that they understand their roles as Legal Guardians. The Applicants are stable financially, the male Applicant earns Kshs.80,000/- per month (pay slip & financial statements attached) while the female Applicant is a business lady. They have assets in terms of plots in Kilifi and Machakos which are in the process of acquiring the title deeds. Since the placement with the minor on 20/09/2019 to date the Applicants have taken good care of baby M and have even introduced him to their extended family. The Adoption Agency recommended the Adoption.
15. The Director of Children's Services filed their report dated 2/06/2023 in respect of the proposed adoption of the child by the Applicants. Emily Kimanzi the Machakos Sub County Children Officer appeared in Court on 22/12/2023 in respect of the proposed adoption of the child by the Applicants. She told the Court that the Applicants have been living with Baby M for 4 years and the bonding process has been successful. The Applicants family is also supportive of the adoption process.
16. Similarly the Report indicated that during the home visits it was observed that the Applicants live in a one bedroomed house at Portland Cement Village, child friendly and secure place for raising a child. They own a 50x100 plot at Lukenya and another 100x100 plot at Kilifi where they are constructing their home. They have also inherited 6 acres from their parents. The Applicants have enrolled the minor in school and are planning to include him in their medical cover. The extended family is supportive and have welcomed the minor into the family. They recommended the adoption.



17. The Guardian Ad Litem, JN of ID No. 244XXXXX filed his Report dated 31st May, 2023 in support of these Adoption proceedings. He appeared in Court on 24/10/2023. He told the Court that he visited the Applicants and observed that the child and the parents have bonded well. The child is happy and healthy and the adoption is in the best interest of the child. Similarly the report indicated that during the home visits it was observed that the Applicants love the child and the child feels safe and loved from his interaction with them. The minor refers to them as mum and dad and they are naturally very protective of him. The Applicants immediate and extended family are in support of the Adoption and have fully welcomed the minor as part of the family. The Guardian Ad litem recommended the adoption.
18. The Legal Guardians JMM and JWM - of Identification Card Numbers 249XXXXX and 145XXXXX respectively are a married couple (sister brother in law 2nd Applicant) they filed their Affidavit of proposed legal guardians sworn on 7th July, 2021. They stated that they are aware that their role is to acquire parental responsibility and rights over the child in the unfortunate event that anything happens to Alphonse and Anna as would incapacitate them and/or prevent them from taking care of the child including death, physical impairment or debilitating disease.
19. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
20. The home visits by the Guardian Ad Litem, the Adoption Society Representative and the Director of the Children's Services established that the Applicants are financially and socially stable and have emotional capability to provide for the upkeep and education of the child and give parental care. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well. The child considers the Applicants to be his parents.

Disposition

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicant's application.
2. The Applicants, ADM and ANM are hereby allowed to adopt Baby MW.
3. Henceforth, the child shall be known as MAD.
4. The child's date of birth is 21st August, 2018 and the place of birth shall be Langa Langa, Nakuru County.
5. The child is a Kenyan Citizen by birth and entitled to all rights of a Kenyan citizen.
6. JMM and JWM shall be the Legal Guardians of the child should such eventuality arise.
7. This Court directs the Registrar General to duly enter this order in the Adoption Register.
8. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security of the child within one year of the Adoption in the best interests of the child under Section 8 of Children's Act 2022.
9. The Guardian ad litem is hereby discharged.



It is so ordered.

**JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 29TH
DAY OF FEBRUARY, 2024 (PHYSICAL/VIRTUAL CONFERENCE).**

M. W. MUIGAI

JUDGE

