



**In re N (Baby) (Adoption Cause E006 of 2022)
[2024] KEHC 2918 (KLR) (22 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2918 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ADOPTION CAUSE E006 OF 2022
JRA WANANDA, J
MARCH 22, 2024
IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001
IN THE MATTER OF BABY N
IN THE MATTER OF AN APPLICATION BY ZOO AND MWK**

IN THE MATTER OF

ZOO 1ST APPLICANT

MWK 2ND APPLICANT

JUDGMENT

1. On 1/09/2023, I delivered a Ruling in this matter directing the Applicants to supply some specified additional documents before this Court could consider their Application for adoption of the baby N.
2. As I stated in the Ruling, the Applicants are Kenyan citizens, a male and female married couple. From the copies of their National Identity Cards supplied, the 1st Applicant was born on 11/07/1983 (currently therefore aged about 41 years) while the 2nd Applicant was born on 10/08/1982 (currently therefore about 42 years). The 1st Applicant-husband is said to be an Information & Communication Technology (ICT) Consultant and also a businessman. The 2nd Applicant-wife is a Dental Specialist. They reside in Eldoret within Uasin Gishu County and wish to adopt the female child named Baby N whose copy of Birth Notification exhibited indicates that she was born on 18/06/2021 within Kakamega County. The child is therefore now approaching 3 years in age.
3. As I further stated in the said Ruling, it is stated that the child’s biological parents, being relatives, surrendered the child through the local Chief and signed consents to that effect. The child was then placed in a children’s home for adoption and was committed into the legal custody of the organization described as “Springs of Life Children’s Home” *vide* Protection and Care Case No. 31/2021 by the Chief Magistrate’s Court, Kakamega. It is further stated that the Applicants received the child into



their home *vide* the Foster Care Agreement with the said Spring of Life Children’s Home and that, to date, the child is under the care and custody of the Applicants.

4. There are also on record, copies of consent forms dated 28/09/2021 signed by the child’s two biological parents, respectively, and also by the child’s maternal grandmother giving up the child for adoption.
5. The Applicants, through Messrs Odero & Partners Advocates, commenced these proceedings *vide* the Originating Summons dated 28/07/2022 and filed in Court on 29/07/2022.
6. As I had further stated in the said Ruling, the Report by the Director, Children’s Department, Ministry of Labour, Social Security and Services dated 16/11/2022 is on record. In the Report, the Director has indicated that his office has investigated and verified the Applicants’ fitness to adopt the child and proceeded to recommend that the adoption be allowed.
7. There is also on record, Reports and other communication filed by or on behalf of the entity described as “Little Angels Network”, a Registered Adoption Society, including the pre-Placement Report dated 3/06/2021.
8. As also stated in the Ruling, on 24/04/2023, I interviewed in Court, one Dorothy Kioko who stated that she is a Children’s Officer from the office of the County Director, Children’s Services, Uasin Gishu County and also involved with Child Helpline 116. She stated that she was standing in for the County Director, Richard Mugata. She then referred to the Report dated 16/11/2022 filed in Court and confirmed that the same is genuine and reflects the findings of the Office. On the same 24/04/2023, I also interviewed the proposed Guardians ad Litem who both confirmed the averments made in the Affidavits already referred to.
9. On 21/07/2023, I took the evidence of both the Applicants and also that of both the proposed Guardians ad Litem. I then formally adopted the Affidavits and Consents and formally admitted them in evidence. Pursuant to my directions, Counsel for the Applicants on 11/08/2023, filed brief written Submissions.
10. In the said Ruling delivered on 1/09/2023, I issued Preliminary Orders as follows:
 - i. The said CWOKM and RCD are now hereby formally appointed to be the joint Guardians ad litem for the child known as Baby N, pending further directions and/or determination of this matter.
 - ii. The said CWOKM and RCD shall, as now formally appointed Guardians ad Litem, file in Court a Report as envisaged under Section 188(2) of the *Children Act* 2022 giving their general assessment, comments and observations over the whole Adoption process undertaken so far, including giving proposals and recommendations, if any, on any issue in connection thereto including, but not limited to, suitability of the Applicants to adopt the child.
 - iii. The Report dated 16/11/2022 prepared by the Director, Children’s, Ministry of Labour, Social Security and Services and signed by one Richard Mugata, is hereby adopted.
 - iv. The Applicants shall, within sixty (60) days from the date hereof, obtain and supply to the Court the following:
 - a. Copies of relevant documents relating to the organization described as Little Angels Network conferring upon it the legal capacity to prepare the Reports that it has supplied in this matter and/or confirming its registration or licensing as an Adoption Society.



- b. Copy of the Report referred to in the Report dated 3/11/2021 from Little Angels Network exhibited to the Applicants' Affidavit, and described as sub-County Children's Officer Report dated 29/09/2021
 - c. Copies of the documents and Reports that were filed and/or relied upon in the case described as Kakamega Chief Magistrate's Court Protection and Care Case No. 31 of 2021 to admit the baby to Springs of Life Children's Home.
 - v. In the meantime, the child shall remain in the custody of the proposed adoptive parents under the regular supervision of the office of the County Director, Children's Services, Uasin Gishu County, and which office shall be at liberty to inform the Court or bring to the Court's attention, any issue, circumstance or observation that may be material to the Adoption process herein.
 - vi. This matter shall be fixed for Mention on a date after lapse of sixty (60) days from the date hereof, to confirm compliance with the directions above and for further orders.
 - vii. On the date of the Mention, a date shall also be fixed for viva voce interview of the proposed Legal Guardian named as ANK under oath.
11. When the matter came up in Court on 20/11/2023, the Applicants had changed Advocates to Messrs Chanzu Victor & Co. Advocates.
12. I however confirmed that the Applicants had now complied with the above orders by filing the following:
- i. In compliance with order (ii) above, Guardians ad Litem Report under Section 188(2) of the *Children Act*, 2022 and dated 3/07/2023.
 - ii. In compliance with order (iii) above, copy of an unsigned Report dated 30/09/2022 prepared by the Director, Children's, Ministry of Labour, Social Security and Services and bearing the name of one Richard Mugata. Save for the dates however, the same turned out to be the same Report filed earlier and dated 16/11/2022 and signed by the said Richard Mugata. The same was already adopted.
 - iii. In compliance with order (iv)(a) above, copy of the Certificate of Renewal Registration for "Little Angels Network" as an Adoption Society.
 - iv. In compliance with order (iv)(b) above, Report dated 29/09/2021 from sub-County Children's Officer Report, Kakamega Central sub-County.
 - v. In compliance with order (iv)(c) above, Warrant dated 4/10/2023 for Committal of the baby to a Charitable Institution - Springs of Life Children's Home - issued by the Kakamega Chief Magistrate's Court.
13. On the said 22/03/2024, I also took the evidence of the proposed Legal Guardian, ANK She stated that she resides in Nakuru, that she is a nurse by profession working at [.....] Health Centre, and that the 2nd Applicant is her sister and the 1st Applicant her brother-in-law. She confirmed her understanding that, if appointed, in the event that the Applicants are not able to take care of the baby, then she will be obligated to step in and do so. She confirmed her ability to do so as she is employed by the Conty Government of [.....], and stated that she lives in a 3 bedroomed house and that she is a mother of 2 daughters whom she lives with. She also vouched for the suitability of the Applicants to adopt the



baby. She stated further that she is presently 49 years of age, she is married, her husband is a Veterinary Officer and that they live together.

14. With the filing of the above additional documents and the taking of the evidence of the proposed Legal Guardian, the record is now complete.

Determination

15. The powers of the High Court to hear and determine Applications seeking adoption orders is derived from the provisions of Section 183(1) of the *Children Act*, No. 29 of 2022 which provides as follows:

“subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as "adoption order", authorising an applicant to adopt a child’.

16. In any matter concerning a child, the “best interest of a child” is what is of paramount importance as provided under Article 53(2) of the *Constitution* and Section 8 of the *Childrens Act*, 2022.

17. From the evidence on record, the Applicants have been approved as suitable prospective adoptive parents by a competent Adoption Society duly registered by the Department of Children Services. There is also evidence that the child has been in continuous care and control of the Applicants within the Republic of Kenya for a period of 3 consecutive months preceding the filing of the Application. The Applicant has therefore met the requirements of Section 185 of the *Children Act*.

18. Further, as aforesaid, the Applicants are now about 42 and 41 years old, respectively, and the child is now approaching 3 years old. Insofar as the Applicants have therefore each attained the age of 25 years, but are not above the age of 65 years and are more than 21 years older than the child, they have also met the threshold set under Section 186(5) of *the Act*.

19. I am also satisfied that the Applicants have sufficiently demonstrated that they are financially stable to an acceptable standard hence possess the means to provide and care for the child. I am further satisfied that the suitability of the Applicants to adopt the baby has been sufficiently investigated by the Directorate of Childrens Services and the Applicants verified as fit to adopt the baby.

20. After hearing the Applicants and the prospective Legal Guardian, and after carefully considering all the Affidavits and documents filed in support of the Application, I find the Applicants to be capable and suited to the role of effectively handling their parental responsibilities. It is this Court’s view that the Applicants have met the parameters that are relevant to their assuming parental responsibility and custody of the child on a permanent basis. I am therefore satisfied that it will be in the “best interest of the child” to be adopted by the Applicants.

Final Order

21. For the said reasons, I allow the Originating Summons dated 28/07/2022 in the following terms:
 - i. The Applicants, ZOO and MWK are hereby authorized to adopt the child known as Baby N, to be now known as Baby MWWO as more particularly described at prayer 3 of the said Originating Summons.
 - ii. The consents of the child’s biological parents are adopted.
 - iii. ANK as more particularly described at prayer 4 of the Originating Summons (the 2nd Applicant’s sister and therefore the 1st Applicant’s brother-in-law) of P.O. Box xxxx-20100



Nakuru is hereby appointed as the Legal Guardian of the child in the event that the Applicant dies, or is incapacitated by ill-health or by any such or similar eventuality ejusdem generis.

- iv. The Registrar General is directed to make an entry of this Order in the Adopted Children Register and to issue a Certificate to that effect.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 22ND DAY OF MARCH 2024

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WANANDA J.R. ANURO

JUDGE

