



**FMM & another v BE (Adoption Cause E001 of 2022)
[2024] KEHC 17193 (KLR) (24 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 17193 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
ADOPTION CAUSE E001 OF 2022**

TM MATHEKA, J

MAY 24, 2024

CASE NUMBER: HCFADOP/E001/2022

CITATION: F.M.M AND R.M.M VS B.E

BETWEEN

FMM 1ST APPLICANT

RMM 2ND APPLICANT

AND

BE RESPONDENT

JUDGMENT

1. By an originating summons dated 10/3/2022 FMM and RMM came under section 4 and 154 of the *Children Act*, 2001 (now repealed), section 9 of *Kenya Citizenship and Immigration Act* No. 12 of 2011, and Article 14 of *the Constitution* of Kenya (2010), seeking orders:
2. That the applicants be authorized to adopt the child Baby E
3. That the consent of the biological parents be dispensed with as the child was abandoned.
4. That upon the making of the adoption order the said child be known as EMM
5. That the Registrar General do make the appropriate entry of EMM in the Adopted Children's Register.
6. That the child EMM be presumed to be a Kenyan citizen born in Kenya.
7. DMM be appointed Legal Guardian of the child EMM.



8. The application was supported by the joint statement of both applicants, the affidavit of the guardian ad litem and the affidavit of the legal guardian.
9. The applicants have annexed evidence of their financial capacity to support the child – through payslips which indicate that both are teachers.
10. They have evidenced their integrity through their police clearance certificates.
11. Their suitability as adoptive parents is vouched by the report from Directorate of Children Services – Makueni dated 15/5/2023 – which also points out two gaps in the matter: The certificate declaring the child free for adoption issued by a registered society. Medical records signed by a medical practitioner That the placing agent, Child Welfare Society of Kenya not being in the current list of registered adoption societies in Kenya under the Directorate of Children’s services.
12. The following recommendations were made:
 1. The applicants are financially and emotionally stable.
 2. Bonding between the couple and the subject was observed to have taken place.
 3. The applicants have lived with the subject for 12 years and have proved that they are able to take on parental responsibility and custody of the child on a more permanent basis if the adoption is approved by the court.
 4. They have also bonded well with the child. The applicants have appointed their sister, DMM as the Legal Guardian to take care of the child in their absence.
 5. The child himself was abandoned at birth or soon thereafter by his mother and is suitable for adoption subject to provision of a certificate declaring him free for adoption. He stands to gain stable parents and a home from this adoption which is in his best interests.
 6. The Director Children Services recommends the adoption of the subject by the applicants on condition that the medical reports for the applicants are availed in court, the child declared free for adoption by a registered adoption society and the certificate availed before this court.
 7. Once the above is achieved, the adoption of Baby E by Franklin Maingi Mutua and Rachael Mbithe Maingi whom, they wish to be named EMM, can be perceived to be recommended by the Directorate of Children Services, in the best interest of the child.
13. From the record I noted that on 2/10/2023 Child Welfare Society of Kenya filed their report ref (WSK/AD/1245/2023/F.O 052 dated 6/6/2023.
14. The report states: The child in this matter, Baby E, was found abandoned on 27/7/2010 within Makaburi area located in Parklands, Nairobi county. The matter was reported at Parklands Police station where it was also booked vide OB. No. 07/27/2010. The child was later referred to Hope House Babies Home where he was committed vide committal order number 38 of 2011 as a child in need of care and protection. This was done in accordance to section 119(1) (a) of the Children’s Act, 2001; “A child is in need of care and protection – who has no parent or guardian, or has been abandoned by his parent or guardian, or is destitute,”. Investigations have been conducted in this case. However, no one has come forward to claim the child and the child’s family has not been found. The efforts of the police have not yielded any fruit. CWSK’s efforts to trace the child’s family through media has also proved futile. Since 2010 to date, the child has remained unclaimed. Over 12 years have elapsed since the child was abandoned. The child is presumed abandoned. In view of these circumstances, the child is in need of alternative family care. This is in line with stipulations in the Africa Charter on



- the rights and Welfare of the Child Article 25(2)(a) which states that: “... a child who is parentless, or who is temporarily or permanently deprived of his or her family environment – shall be provided with alternative family care.”
15. The best interest of this child will be served through adoption. It will accord the child a chance to belong to a family and uphold his right to parental care and protection as provided for in *the Constitution* of Kenya 2010, Article 53(1) (e), which states that
 - “ Every child has the right – to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not;”
 16. We therefore declare Baby E available for adoption under section 159(1) (a) (i) of the *Children Act, 2001.* (emphasis added)
 17. A certificate declaring the child free for adoption is annexed – together with the letter from OCS Parklands Police Station ref C/GEN/II/VOL. XII/28, dated 27/7/2010, Committal Order to Hope House Babies Home for Children Court Nairobi – dated 3/2/2011 in Protection & Care 38/11 and the admission form, letter from Parklands Police Station of 30/1/2023- Ref C/ORG/5/22/1/VOL.1/56, advertisements in Sunday Nation of 4/10/2015, 15/11/2015, 4/1/2016 for people to identify children at CWSK, agreement of foster parents dated 13/2/11 between the proposed adoption parents and CWSK, agreement for temporary placement between CWSK and the proposed adoptive parents – 23/2/11.
 18. I have carefully considered the testimony of the adoptive parents, the reports from CWSK, the report from the DCS and the legal provisions with report to adoption.
 19. The child was declared free for adoption.
 20. The two parents have been found suitable as they have complied with the requirements of the law.
 21. Through the orders of this court the child will get to enjoy the right to parental care and love, the rights and protection that come to a child naturally through family. The applicants will also get the opportunity to raise a child, to exercise the rights and duties of a parent and to contribute to the welfare of the child who in his own little way represents the future of this Nation.
 22. Through the Adoption order, a new family, as envisaged by *the Constitution* which recognizes this diversity, will have been created, in the best interests of the child.
 23. The applicants will bear in mind that the adoption order is final unless for it falls within the purview of s. 190 of the *Children Act* 2022 which provides Review of adoption in the following circumstances
 1. A person who is a biological parent of a child in respect of whom an adoption order has been granted by a Court may apply to the Court for review of the order for adoption on grounds that—
 - a. the child in respect of whom an adoption order has been granted by a Court was lost or abducted;
 - b. the biological parent reported to the Secretary and took all measures to trace, to find and to reunite with the child and were not successful; and
 - c. it is in best interest of child to reunite with the child with their biological parent.
 24. In that event the court where it is satisfied with the grounds under subsection (1), may—



- a. issue an order to revoke the adoption order and give custody of the child to the biological parent; or
 - b. review an existing order to give joint custody to a biological parent and an adoptive parent
25. Otherwise, subject to the filing of the medical report the application is allowed and the following orders issue:
1. The applicants be and are hereby authorized to adopt the child Baby E
 2. That the consent of the biological parents be and is hereby dispensed with.
 3. That the child be known as EMM
 4. That the Registrar General do make the appropriate entry of EMM in the Adopted Children's Register.
 5. That the child EMM be and is hereby presumed to be a Kenyan citizen born in Kenya.
 6. DMM be and is hereby appointed Legal Guardian of the child EMM
 7. The guardian ad litem be and is hereby discharged.
 8. Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY ON 17TH MAY 2024

.....

MUMBUA T. MATHEKA

JUDGE

CA: Ms. Nelima/Ms. Elizabeth 1st Respondent present virtually

Court: The Reports were filed on 22nd May 2024 Orders to issue accordingly on 24th May 2024

SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA

THE JUDICIARY OF KENYA.

MAKUENI HIGH COURT

HIGH COURT DIV

DATE: 2024-05-24 13:05:49

Doc IDENTITY: 1831358142079711556716063812 Tracking Number:OO674W2024

