



REPUBLIC OF KENYA



KENYA LAW
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**In re GM (Child) (Adoption Cause E004 of 2024)
[2024] KEHC 6712 (KLR) (24 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E004 OF 2024**

G MUTAI, J

MAY 24, 2024

IN THE MATTER OF ADOPTION OF GM (A CHILD) BY DAA (THE APPLICANT)

JUDGMENT

Introduction

1. The Applicant is a 35-year-old, single Kenyan lady of the African race. She professes the Christian faith and resides in the (Particulars withheld) area of Mombasa County. She is an employee of the (Particulars withheld) and is also engaged in business activities. She is not related to the child the subject of these proceedings.
2. The Applicant took possession of the child on 11th May 2018. The child has been in her custody, care and possession since then. If the adoption application is allowed she proposes to change the home of the child to GAA.
3. The child was found abandoned near Sosiani River in Eldoret on 27th June 2014. The incident was reported in Eldoret Police Station vide OB NO 97/27/00/2014. The child was admitted to Moi Teaching & Referral Hospital and was discharged on 17th July 2014. She was committed to the Children Welfare Society of Kenya, Mama Ngina Kenyatta Temporary Place of Safety. The parents of the child or her relatives have not been found despite extensive searches by the authorities.
4. The Child Welfare Society of Kenya declared the child as being free for adoption vide a Certificate of Declaring a Child Free for Adoption, Serial Number xxxx.

The Pleadings

5. Vide the Originating Summons dated 5th February 2024, the Applicant sought the following orders:-
 1. That the Applicant be authorized to adopt GM (a child);
 2. That the child was abandoned and the consent should be dispensed;
 3. That upon the making of the adoption orders, the said child be known as GAA;



4. That the Registrar General do make an appropriate entry of GAA in the Adopted Children's Register;
5. That the child, GAA, be presumed to be a Kenyan citizen born in Kenya and that the Director of Immigration Services issue GAA with a Kenyan passport; and
6. That FOA be appointed Legal Guardian of the child GAA.

Appointment of a Guardian-ad-litem

6. The Applicant filed, together with the Originating Summons, a Chamber Summons application dated 5th February 2024, vide which she sought to have RAA appointed as a guardian-ad-litem in respect of these adoption proceedings.
7. The said application was heard on 7th March 2024. Upon hearing the testimony of RAA and being satisfied that she qualifies to be appointed as a guardian-ad-litem, I appointed her as such. I ordered her to prepare and file in this Court the requisite social enquiry report within 30 days. I directed the Directorate of Children Services, through the Children Department Mombasa to conduct a social enquiry report within 30 days of the said date. Hearing of the main Originating Summons was slated for 10th April 2024.

Hearing of the Originating Summons

8. The Originating Summons was heard on 15th April and 6th May 2024. A total of 5 witnesses testified. I shall set out a summary of their testimonies in the succeeding paragraphs of this judgment.
9. The first Witness was the Applicant. Ms DAA testified that she works at the (Particulars withheld) and resides in (Particulars withheld). She described the child as her own. Ms DAA desires to adopt the child as she is unable to conceive. She testified that she knows that the adoption application, once granted, is permanent. She proposed that her brother, FOA, be the Legal Guardian of the child in the event that the adoption application is allowed.
10. The 2nd Witness was JOO. He is self-employed, works at (Particulars withheld), and resides in (Particulars withheld). JOO testified that he knew the Applicant and was sure the Applicant would take care of the child.
11. The third Witness was FOA. FOA is a security guard with Texas Security. He is married with 2 children. The Applicant is his sister. Mr. FOA expressed his readiness to be the Legal Guardian of the child in the event that the sole Applicant dies or is otherwise unavailable. He testified that his wife was agreeable to the proposal.
12. The fourth Witness was RAA. RAA works as the (Particulars withheld), Mombasa. She isn't related to the Applicant although they both work for the same employer. She testified that she visited the home of the Applicant. She found that the Applicant lives in a self-contained house. The child is 10 years old and goes to school at (Particulars withheld) Academy where is currently in Grade 4. The said guardian-ad-litem recommended the adoption by the Applicant.
13. Louisa Kemuma was the fifth Witness. Ms. Kemuma works at the Regional Office of the Children's Department. She testified that they conducted a home visit on 9 April 2024. She testified that they found the child to have bonded well with the Applicant, with whom she has lived for 7 years. She recommended the adoption.



Analysis and Determination

14. I have considered the application herein, the documents in support thereof and evidence of the various witnesses. The issues that emerge for determination are whether the child is available for adoption, if the Joint Applicants are fit to adopt the baby, and, most importantly, whether the adoption is in the best of the child.
15. I have already set out the circumstances under which the child was found. The child was abandoned immediately after birth. Nobody has come forward to claim her despite an extensive search. Given the period that has elapsed since the said occurrence, it is most unlikely that the biological parents will ever turn up. The need for consent pursuant to sections 186(8) and 187 of the *Children Act* 2022 is therefore dispensed with. I am guided by the case of *In re HN (Baby)* [2020] eKLR, where the court stated:-

“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.”
16. Regarding the child’s nationality, the evidence adduced shows that she was found abandoned immediately after her birth. Article 14(4) of *the Constitution* of Kenya, 2010 states that a child who is less than eight years of age and whose nationality and parents are not known is presumed to be a Kenyan citizen by birth. In view of this provision, the child herein is presumed to be a Kenyan citizen by birth.
17. In terms of age, the child is above six weeks and below 18 years, which provision falls within the age bracket of any adoptive baby pursuant to Section 184 (b) of the *Children Act*, 2022. Further, Section 185(1) states that any child who is a resident of Kenya, whether born in Kenya or not, is eligible for adoption. I have no doubt the child is fit for adoption.
18. Concerning the Applicant’s suitability, she is a Kenyan citizen aged 35 years 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 that I have seen, the Applicant has the means to take care of the child. She has no criminal records. Since the placement of the minor into her custody, the child has fully bonded with her. She also understands the consequences of adoption and knows that once an adoption order is made, it is permanent.
19. Consequently, I have no doubt that she has met the necessary 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.”
20. 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.
21. 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.”

22. The child herein was found abandoned. She, therefore, needs basic 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.”

Disposition

23. In my view, the application has merit. Consequently I issue the following orders:-

1. I declared GM (a child) a Kenya citizen by birth;
2. The consent of the biological parents of the child to the adoption is hereby dispensed with;
3. The Applicant DAA is hereby authorised to adopt GM (a child);
4. GM (a child) shall henceforth be known as GAA ;
5. FOA is hereby appointed as a Legal Guardian of GAA and entrusted with the responsibility of taking care of her in the event that the Applicant dies or is otherwise permanently unable to take care of her before she attains the age of majority;
6. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of GAA as being 27th June 2014 in the Adopted Children Registrar; and
7. The guardian-ad-litem RAA is hereby discharged.

24. I make no orders as to costs.

25. Orders accordingly.

DATED AND SIGNED THIS 24TH DAY OF MAY 2024 AT MOMBASA.

GREGORY MUTAI

JUDGE

In the presence of: -

No appearance for the Applicant; and

Arthur - Court Assistant

