



In re Baby G (Adoption Cause E215 of 2022)
[2023] KEHC 23265 (KLR) (Family) (29 September 2023) (Judgment)

Neutral citation: [2023] KEHC 23265 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E215 OF 2022
PM NYAUNDI, J
SEPTEMBER 29, 2023
N THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY G
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION
BY
DMK..... 1ST APPLICANT
NGK.....2ND APPLICANT

IN THE MATTER OF
DMK 1ST APPLICANT
NGK 2ND APPLICANT

JUDGMENT

1. The Applicants, DMK and NGK vide Originating Summons dated November 4, 2022 have made an application for the adoption of BABY G the child herein. The applicants met at University of Nairobi in 2004 and got married on March 7, 2009 and have attached a copy of marriage certificate serial number 6XXXX3. They wish to adopt the child with intention to enlarge their family, give their adopted son a sibling and be parents to a child who would otherwise lived without parents and a home.
2. The matter proceeded for hearing via *viva voce* evidence on the Teams virtual platform on July 27, 2023.
3. The Applicants are Kenyan Citizens and of the Christian faith. They aver that they have the financial means and capability to take care of the Child. The 1st applicant a Mathematician and currently runs a company known as [particulars withheld] Solutions Limited, the second applicant is a Human



Resource Officer at [particulars withheld] Bank, Kenya. They have had custody of the child since December 8, 2021. They reside at Nyayo, Embakasi Court. They fully understand the consequences of an adoption order.

4. The child is estimated to have been born January 7, 2021. He was found abandoned on the street near Kamukunji, Nairobi on January 12, 2021, he was rescued by a Good Samaritan named CW of ID number: 22XXXX09 and phone number 072XXXX44. She rescued the child and reported the matter at Kamukunji Police Station where the case was recorded vide Occurrence Book Number 37/12/1/2021.
5. Kamukunji Police Station issued the Initial letter dated January 12, 2021. The letter was addressed to The Nest Children's Home stating the child's abandonment and sought assistance for the child to be placed at the Home as they try trace the mother. The child was admitted at The Nest Children's home on the same day.
6. In a report February 12, 2021, the Sub – County Children Officer Starehe wrote a report to the Resident Magistrate Children's Court Nairobi recommending the child to be committed to The Nest Children's Home for care and protection for period of three (3) years.
7. On February 24, 2021 Resident Magistrate Children's Court Milimani Committed the child to The Nest Children's Home vide care protection number Eo35 of 2021 for period of three years. A final police letter was furnished on August 10, 2021. The letter from Kamukunji Police Station to the Nest Children's Home talked about the abandonment of the child and stated that nobody has appeared at the station to claim the child. Therefore, the home can proceed with legal action to help the child.
8. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report dated August 4, 2021 and issued a certificate serial No 0XXXX9 declaring the child free for adoption. On January 19, 2023, the Court appointed a Guardian Ad litem DR GKM.
9. The Guardian Ad Litem, DR GKM was present in Court and presented his report dated March 30, 2023. He confirmed that he visited the Applicants and the Child at their home and observed that they have bonded well, and the child is well taken care of. He recommends that the Applicants be allowed to adopt the Baby.
10. An officer of the Department of Children Services, Winfred Ikinya prepared a report dated February 16, 2023, and counter signed by Nancy Waswa. The report established that the child was abandoned on the street near Kamukunji, Nairobi on January 12, 2021, he was rescued by a Good Samaritan named CW of ID number: 22XXXX09 and phone number 072XXXX44. She rescued the child and reported the matter at Kamukunji Police Station where the case was recorded vide Occurrence Book Number 37/12/1/2021.
11. The Report further documents that a report dated February 12, 2021, the Sub – County Children Officer Starehe wrote a report to the Resident Magistrate Children's Court Nairobi recommending the child to be committed to The Nest Children's Home for care and protection for period of three (3) years and Committed the child to The Nest Children's Home vide care protection number Eo35 of 2021 for period of three years.
12. The child having remained unclaimed at the institution for more than six months, was declared free for adoption by the Little Angels Network on September 2, 2021 and certificate number 0XXXX9 issued. He was placed with the applicants on December 8, 2021 and has been with them since.



13. The proposed Legal Guardian DTK and PMM attended court and confirmed they are willing to take up the role of legal guardians. They are the 1st Applicant's brother and sister in law.
14. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the [Children Act, 2022](#) provides.
- (1) The Court may make an adoption order on application by—
- A sole applicant; or
 - Two spouse jointly
- (2) The Court shall not make an adoption order in any case unless—
- the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.
3. The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
15. The Applicants are both aged 42 years.
16. Article 53 of the [Constitution](#) of Kenya, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:
- A Child's Best interests are of paramount importance in every matter concerning the child
17. This principle is restated Under Section 8 of the [Children Act, 2022](#) which provides
- Best interests of the child.
- (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies—
- the best interests of the child shall be the primary consideration;
 - The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.
- Section 194 (1) (c) of the Act also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;
18. In view of the foregoing, the court is of the considered view that it is in the child's best interest to be adopted by the Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated November 4, 2022 and order as follows:
- The Applicants DMK and NGK be allowed to adopt BABY G.
 - The Child to be known as TKM.
 - The Child be presumed to be a Kenyan citizen by birth.
 - The child's date of birth is January 7, 2021 at Nairobi County.
 - DTK and PMM are hereby appointed as legal guardian of the Child.



- VI. The Registrar is hereby directed to enter this adoption into the Register of Adopted Children.
- VII. The Director Immigration is authorized to issue the child with a Kenyan passport
- VIII. The Guardian Ad litem is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 29TH DAY OF SEPTEMBER, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Ms Kimenyi for the Applicants

Sylvia Court Assistant

