



**In re Adoption of Baby SS (Minor) (Adoption Cause E018 of 2024)
[2024] KEHC 10492 (KLR) (Family) (29 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10492 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E018 OF 2024
H NAMISI, J
AUGUST 29, 2024**

IN THE MATTER OF

R KG APPLICANT

JUDGMENT

1. The Applicant has filed Originating Summons dated 31 January 2024, seeking the following orders:
 - i. That the Applicant be authorised to adopt Baby S.S., an infant who is to be known as P.M, and the Registrar General be directed to enter this adoption into the Register of Adoptions;
 - ii. That E.K.M and T.M.N be appointed as legal guardians of the minor who shall be presumed to have been born in Kenya;
2. The Summons is accompanied by a Statement in Support of the Application for an Adoption Order, Affidavit in Support of the Application and annexures thereto.
3. The matter was canvassed by way of viva voce evidence on the virtual platform on 4th July 2024.

The Child

4. The child (female) was born on 25 July 2020. She is almost 4 years old. The child was presented to the Nyeri Central Children’s Office on 29 July 2020 for purposes of adoption by her biological mother. She was referred to KKPI Adoption Services, where the implications of adoption were explained to her. The child was then committed to New Life Home Trust, Nyeri on 30 July 2020 by the Children’s Court at Nyeri.
5. The child was declared free for adoption by the Buckner Kenya Adoption Services, a registered Adoption Agency, vide the annexed Certificate serial number 0695. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.



The Applicant

6. The Applicant is a Kenyan citizen, residing in Buruburu, Nairobi County. She is 45 years old and employed by the Public Service Commission. She is single, with one daughter. The Applicant stated that her motivation to adopt the child is that she wishes to expand her family, and give her biological daughter a sibling.
7. The child was placed with the Applicant on 27 September 2023. The DCS Report and Guardian ad Litem Report indicate that the child has bonded well with the Applicant and the older sister. The Applicant confirmed that her immediate family has also accepted the child herein. She confirmed that she is fully aware of the implications of an adoption order and that the same is irreversible.

The Biological Parents

8. From the DCS Report dated 5 June 2024, the biological mother gave the child up for adoption. She signed the initial consent but failed to show up to sign a second consent after the statutory period of 6 weeks. Efforts by the Children's Office and the Children's Home to trace the biological mother proved to be futile, thus prompting them to report the matter to the Police. The matter was reported to the Nyeri Police Station vide OB No. 40/11/1/2023.
9. Details of the biological father are not provided.
10. In the circumstances, there exists no known person from whom consent for this adoption can be sought and/or obtained. I, therefore, waive this requirement in line with section 185 (4)(b) of the *Children Act*, Cap 141 of the Laws of Kenya.

The Adoption Application

11. I have considered the Summons, the evidence on record as well as the various reports filed to support the suitability of the Applicant as an adoptive parent. The Applicant states that she is a practising Christian and intends to raise the child in the Christian faith.
12. The Applicant has annexed copies of bank statements and copies of her pay slips as proof of her financial stability. She has provided a copy of clearance certificate from the Kenya Police Service and Recommendations letters as well in proof of her character and good standing.
13. The Applicant presented E.K.M and T.M.N as proposed legal guardians for the child. The said legal guardians, a married couple, signed a consent dated 31 January 2024 indicating their willingness to step in and care for the child in the event the Applicant is unable to provide for the child. E.K.M is a sister to the Applicant, while T.M.N is her brother-in-law. The proposed legal guardians confirmed that they understood their role.
14. From the material availed, I am satisfied that the Applicant is a suitable adoptive parent.

Analysis and Determination

15. Article 14 (4) of the *Constitution* provides as follows:

A child found in Kenya who is, or appears to be, less than 8 years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.

16. The child was presented for adoption by her biological mother a few days after she was born. I, therefore, declare that the child is a citizen of Kenya by birth.



17. In deciding any matter involving a child, the court is obligated to give priority to the best interest of the child. Section 8 of the *Children Act* provides:
1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies –
 - a. The best interests of the child shall be the primary consideration;
 - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule;
 2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-
 - a. Safeguard and promote the rights and welfare of the child;
 - b. Conserve and promote the welfare of the child; and
 - c. Secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
18. I have considered the Reports filed by the Adoption Agency, the Guardian *Ad Litem*, the Director of Children Services, all of which were positive and recommended the adoption. It is therefore my view that the adoption does serve the best interests of the child.
19. Accordingly, I allow the Originating Summons and make the following orders:
- i. That the Applicant, R.K.G, is allowed to adopt the child currently identified as Baby S.S;
 - ii. Upon adoption, the child shall be renamed P.M;
 - iii. The child is declared to be a Kenyan citizen by birth, entitled to all the rights and privileges under the *Constitution* of Kenya and all applicable laws;
 - iv. E.K.M and T.M.N are appointed as Legal Guardians of the child,
 - v. The Guardian *ad Litem* is hereby discharged;
 - vi. That the Registrar-General is directed to make the appropriate entries in the Adopted Children's Register;

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2024.

HELENE R. NAMISI

JUDGE

