



**In re Baby SW (Minor) (Adoption Cause E020 of 2023)
[2024] KEHC 10458 (KLR) (Family) (29 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10458 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

ADOPTION CAUSE E020 OF 2023

H NAMISI, J

AUGUST 29, 2024

IN THE MATTER OF THE CHILDREN ACT, CAP 141 OF THE LAWS OF KENYA

AND

IN THE MATTER OF BABY S. W (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION

IN THE MATTER OF

DNW 1ST APPLICANT

ALKA 2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 18 January 2023, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
 - i. That the child be presumed to be a Kenyan citizen by birth;
 - ii. That the Director of Immigration be authorised to issue the child with a Kenyan passport;
 - iii. That the Applicants be authorised to adopt S.W who shall be known as S.W.N;
 - iv. That J.N.W of P. O Box xx – xxxx Nanyuki be appointed as the legal guardian of the child in the event of the Applicants’ death or incapacity before the child is of age;
 - v. That the court be pleased to make any further orders it may deem necessary;
2. The matter was canvassed by way of viva voce evidence on the virtual platform.



The Child

3. The child (female) was born on 30 January 2017 in Laikipia County to P.O.M. (father) and J.M.W (mother). Currently aged 7 years, the child resides in Nanyuki. She is enrolled at [Particulars withheld] Primary School. The child knows the 1st Applicant, who is her uncle, as well as the 2nd Applicant.
4. From the evidence presented, the child was neglected by her biological mother at the age of 1 year. She has been raised by the aunt to her mother. Whenever the biological mother visits the child, the experience is chaotic and traumatizing for the child.
5. The child was declared free for adoption by Change Trust Adoption Society on 28th October 2022 vide certificate number xxxx.

The Applicants

6. The Applicants are a married couple, having married on 1 December 2018 under the laws of Queensland, Australia. The couple has three children.
7. The 1st Applicant is the maternal uncle to the child, hence the application for kinship adoption as provided under section 193 of the *Children Act*. He resides in Queensland, Australia where he is employed as a Forensic Officer. His motivation for adopting the child is as a result of the neglect by the child's biological mother. It was his testimony that the biological mother had threatened the child and was consequently arrested.
8. The 2nd Applicant, an Australian national, is a full-time mother. The Applicants confirmed that they fully understand the implications of an adoption order and that the same is not reversible.
9. Pursuant to section 195 of the *Children Act*, the Applicants provided letter of consent from J.N.W., agreeing to be appointed as the legal guardian of the child in the event that anything untoward happens to the Applicants. J.N.W is a sister to the 1st Applicant. She confirmed that she understands her role and responsibility.

The Biological Mother

10. From the reports presented, the biological mother has had a very troubled past. The child was conceived while the biological mother was enrolled as a high school student. She was then forced to drop out of school. After birth, the biological mother mistreated, neglected and severally abandoned the child. The child then ended up in the care and control of relatives. Additionally, the visits to see the child have been marred with violent threats against the child, leading to the biological mother's arrest and incarceration.
11. In the circumstances, this court waives the requirement for consent from the biological parents.

The Adoption Approval Process

12. Change Trust conducted an assessment of the Applicants and sought consent of members of the immediate and extended family. The Agency filed its report dated 28 October 2022 recommending the adoption of the child.
13. On 23 March 2023, the Court issued an order appointing G WK as the minor's Guardian *ad Litem*, and further directing the Guardian *ad Litem* and Director of Children's Services to investigate the suitability and fitness of the Applicant and subsequently file their respective reports within 40 days.



14. The Guardian *ad Litem* filed her report dated 17 November 2023, recommending adoption of the child. The Directorate of Children’s Services, Nairobi County filed its report dated 19 October 2023, recommending the adoption of the child by the Applicant herein.
15. Section 193(1) of the *Children Act* provides that kinship adoption order may only be made in favor of a relative of the child. In this instance, the 1st Applicant is a maternal uncle to the child.
16. In view of the foregoing, the court is satisfied that:
 - i. The proposed adoption is a kinship adoption, meaning that the child will continue to be within the family.
 - ii. The adoption will be in the best interest of the child; and
 - iii. The Applicants have been approved as prospective adoptive parents by competent social workers through a duly registered Adoption Society under the Department of Children Services, thus they are able to effectively handle their parental responsibilities
17. Accordingly, the Originating Summons is allowed and the following orders are hereby issued:
 - i. The Applicants, D.N.W and A.L.K.A, are hereby authorised to adopt the child currently known as Baby S.W, who will henceforth be known as S.W.N;
 - ii. The Registrar General is directed to enter this Order in the Adopted Children’s Register and to issue a Certificate to that effect;
 - iii. That the Guardian *ad Litem* is hereby discharged;
 - iv. That J.N.W is hereby appointed as the legal guardian of the child.

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on a virtual platform in the presence of

Ms. Mwangifor the Applicants

