



**In re Baby SMA alias SMAO (Minor) (Adoption Cause E023 of 2024)
[2024] KEHC 10460 (KLR) (Family) (29 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10460 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E023 OF 2024
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 SMA ALIAS SMAOO (MINOR)
AND
IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION
IN THE MATTER OF
JAO APPLICANT**

JUDGMENT

1. Before this Court is the Originating Summons dated 1 February 2024, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
 - i. That the Applicant be and is hereby authorised to adopt the child currently known as Baby SMO;
 - ii. That if the adoption order is granted the said child is thereafter known as SMAOO;
 - iii. That the child’s date of birth be declared to be 28 December 2008 and her place of birth to be declared to the Umoja Hospital, Nairobi County;
 - iv. That the child be declared to be a Kenyan citizen;
 - v. That both the biological father and the biological mother of the minor are deceased and the legal guardian of the minor has given consent to the adoption;



- vi. That RO may be appointed as legal guardian of the child in the event of the death of the Applicant or incapacity of the Applicant rendering her unavailable or incapable of taking care of the child;
 - vii. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register.
2. The matter was canvassed by way of viva voce evidence on the virtual platform.

The Child

3. The child (female) was born on 28 December 2006 in Nairobi County to HOO (father) and BWO (mother). Currently aged 17 years, the child is a Form 3 student. She presented her consent dated 2nd September 2023 in which she confirms that she has been living with the Applicant since 2015 when her paternal grandmother passed away. Both biological parents of the child are deceased (Exhibit JAO-16)

The Applicant

4. The Applicant is a Kenyan citizen aged 65 years, residing in Nakuru. She ekes a living as a business lady. The child herein is her grand daughter, child to her daughter, BWO(deceased), hence the application for kinship adoption as provided under section 193 of the *Children Act*. The Applicant is a widow and has 4 children. Consents of the Applicants' children were provided (Exhibit JAO-9)
5. The Applicant's motivation for adopting the child is to ensure that the child can have full rights to inherit her estate. She confirmed that she fully understands the implication of an Adoption Order and that the same is not reversible.
6. The Applicant presented copies of title deeds, share certificates, Police Clearance Certificate as well as recommendations, all pursuant to the provisions of The Children (Adoption) Regulations, 2020. These disclose that the Applicant is financially, socially, physically and mentally fit to adopt the child.
7. Additionally, pursuant to section 195 of the *Children Act*, the Applicant provided letters of consent from R.O, agreeing to be appointed as the legal guardian of the child in the event that anything untoward happens to the Applicant. R.O is an uncle to the child.

The Biological Parents

8. The Child's biological parents are both deceased. The child has been residing with her grandmothers, paternal and now maternal, since their demise. The Applicant presented a consent by MAO, offering the child for adoption (Exhibit JAO-2). MAO is an aunt to the child.

The Adoption Approval Process

9. Kenya Children's Homes Adoption Society conducted an assessment of the Applicant and sought the consent of the child as well as members of the immediate and extended family. The Agency filed its report dated 16 April 2024 recommending the adoption of the child. The child was declared free for adoption vide a Certificate of Declaring a Child Free for Adoption serial number 950.
10. On 14 March 2024, the Court issued an order appointing Edna Mogita Ondimu 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 45 days.



11. The Guardian ad Litem filed her report dated 17 April 2024, recommending adoption of the child. The Directorate of Children’s Services, Nairobi County filed its report dated 15 February 2024, recommending the adoption of the child by the Applicant herein.
12. 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 Applicant is a maternal grandmother to the child.
13. 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 Applicant has been approved as a prospective adoptive parent by competent social workers through a duly registered Adoption Society under the Department of Children Services, thus she is able to effectively handle her parental responsibilities
14. Accordingly, the Originating Summons is allowed and the following orders are hereby issued:
 - i. The Applicant, JAO, is hereby authorised to adopt the child currently known as Baby SMA, who will henceforth be known as SMAOO;
 - 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 RO 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

.....N/A.....for the Applicant

