



**In re NAW (Minor) (Adoption Cause E102 of 2023)
[2024] KEHC 11292 (KLR) (Family) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11292 (KLR)

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

ADOPTION CAUSE E102 OF 2023

CJ KENDAGOR, J

SEPTEMBER 26, 2024

IN THE MATTER OF

IKN 1ST APPLICANT

INM 2ND APPLICANT

JUDGMENT

1. Before this Court is the application dated 5th June, 2023. The Applicants IKN and INM are seeking to be authorized to adopt Baby EH, hereinafter referred to as the child, and upon adoption, the child is to be known as SNK. JNM be appointed as the child’s legal guardian upon granting of the Adoption Orders.
2. The Applicants are a married couple and Kenyan citizens, as evidenced by copies of their Marriage certificate and Kenyan National Identity Cards. They are business people, and their financial statements demonstrate their financial capability and ability to provide for the minor. Their health status is good, as evidenced by their medical reports, and they do not have any previous criminal records, as evidenced by their Certificates of Good Conduct issued by the Directorate of Criminal Investigations. They have indicated that they would like to legalize the relationship between the child through adoption to enable the child to become a complete member of the family.
3. The report from the Ministry of Labour and Social Protection State Department of Social Protection - Directorate of Children’s Services (Nairobi County) dated 11th October 2023, indicates that the child is male and 2 years old, having been born on 8th January 2022. The Child was abandoned by her mother at Mbagathi Hospital's new unit and was admitted to New Life Home Trust on 28th January, 2022. The child was placed before the applicants on 7th October, 2022 and was declared free for adoption on 9th September, 2022 by Buckner Kenya Adoption Society vide freeing Certificate Serial Number XXXX.



4. The child is a Kenyan citizen by virtue of Article 14 (1), which provides that a person is a citizen by birth if, on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.
5. In light of the best interests of the child principle provided for under Article 53 (2) of the Constitution of Kenya, 2010. Sections 8 (1), (2) and (3) of the Children's Act and the 1st Schedule of the Children's Act, this Court has an obligation to prioritize the child's best interests in making decisions touching on her.
 - a. Article 53 of the Constitution, 2010 states that a child's best interests are of paramount importance in every matter concerning the child.
 - b. Sections 8 (1), (2) and (3) of the Children's Act provides as follows;
 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 public interest.
 3. In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be considered in appropriate cases, having regard to the child's age and degree of maturity.
 - c. The First Schedule as provided for under Section 8 (1) of the Children's Act provides best interests considerations to be as follows:
 1. The age, maturity, stage of development, gender, background and any other relevant characteristics of the child.
 2. Distinct special needs (if any) arising from chronic ailment or disability.
 3. The relationship of the child with the child's parent(s) and/or guardian(s) and any other persons who may significantly affect the child's welfare.
 4. The preference of the child, if old enough to express a meaningful preference.
 5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.



6. The stability of any proposed living arrangements for the child.
 7. The motivation of the parties involved and their capacities to give the child love, affection and guidance.
 8. The child's adjustment to the child's present home, school and community.
 9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/or guardian(s), including physical access.
 10. The capacity of each parent and/or guardian(s) to cooperate or to learn to cooperate in child care.
 11. Methods for assisting parental and/or guardian cooperation and resolving disputes and each parent's/guardian's willingness to use those methods.
 12. The effect of the child if one parent/guardian has sole authority over the child's upbringing.
 13. The existence of domestic abuse between the parents/guardian(s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
 14. The existence of any history of child abuse by a parent and/or guardian(s); or anyone residing in the same dwelling as the child.
 15. Where the child is under one year of age, whether the child is being breast - fed.
 16. The existence of a parent's (s) or guardian's (s) conviction for a sex offense or a sexually violent offense under the *Sexual Offences Act*.
 17. Where there is a person residing with a parent or guardian, whether that person; -
 - a. Has been convicted of a crime under this Act, the *Sexual Offences Act*, the Penal Code or any other legislation.
 - b. Has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
 18. Any other factor which may have a direct or indirect effect on the physical and psychological well-being of the child.
6. The report from the Ministry of Labour and Social Protection State Department of Social Protection - Directorate of Children's Services (Nairobi County), the report from Buckner Kenya Adoption Society, the guardian ad litem and the proposed legal guardian indicate that the child will be well taken care of in the care and custody of the adoptive parents.
 7. I find that this adoption gives the child a chance at a better life and education in a loving and stable home with the adoptive parents.



8. In the circumstances, I allow the originating summons dated 5th June, 2023 and make the following orders:
- a. The Applicants IKN and INM are authorized to adopt the child known as EH.
 - b. Upon adoption, the child shall be known as SNK.
 - c. The child is declared a Kenyan citizen by birth and is entitled to all rights and benefits under the Constitution of Kenya, 2010 and all applicable laws.
 - d. JNM is appointed as the legal guardian of the child.
 - e. The Registrar General is directed to make the relevant entries in the Adopted Children's Register in respect of the child.
 - f. The Registrar of Births and Deaths is directed to issue a birth certificate in respect of the child's new name.
 - g. The Guardian *ad litem* is hereby discharged.

It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 26TH DAY OF SEPTEMBER, 2024.

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C. KENDAGOR

JUDGE

In the presence of:

Ms. Muhanda for the Applicants.

Beryl- Court Assistant.

