



**In re SP (Child) (Adoption Cause E118 of 2022)
[2023] KEHC 140 (KLR) (Family) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E118 OF 2022
MA ODERO, J
JANUARY 20, 2023**

IN THE MATTER OF

SMK 1ST APPLICANT

RCN 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated July 2, 2022 by which the Applicants seek the following orders:-

- “1. Spent
2. Spent
3. That the applicants be authorized to adopt SP alias Abandoned Baby B Unknown to be known as BSM.
4. That the child be presumed a Kenyan Citizen by birth.
5. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
6. That the Director Immigration be authorized to issue the child with a Kenyan Passport.
7. That NC and MKK be appointed the legal guardians of the child in the event of the death or incapacity of the Applicants before the child is of age or independent.
8. That the court be pleased to make any further orders it deems necessary.”



2. The application was supported by the Affidavit of even date sworn by the Applicants and was canvassed by way of viva voce evidence on the virtual platform.
3. The Applicants SMK and RCN are a couple who got married to each in the year 2012. To date the couple have not been blessed with a child of their own. They now seek to adopt a child in order to complete their family.
4. The Applicants both confirmed that they understand the legal implications of an adoption order. They each undertake to accord to the subject child all the rights due to a biological child.

Analysis and Determination

5. I have considered this application, the Reports filed in court as well as all the evidence adduced in support thereto. The prerequisites for adoption are set out in Section 184 (1) of the Children Act 2022 which provides –
 - “ 184(1) A person shall not commence any arrangements for the adoption of a child unless –
 - (a) the council in accordance with the rules has declared the child free for Adoption.
 - (b) the child has attained the age of six weeks.”
6. The subject child was born on May 4, 2021. Annexed to the summons is a copy of the child's Birth Certificate Serial No. XXXX (Annexure 'SRC-1'). Therefore, the child is now aged 1 ½ years old and is above the six (6) week age limited provided for in the Act.
7. Buckner Kenya Adoption Services who are a registered Adoption Agency have annexed to the summons a copy of their report Serial No XXXX dated November 30, 2021 declaring the Subject child Free for Adoption. Accordingly, I am therefore satisfied that all the legal prerequisites for an adoption order have been met.
8. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. The Applicants are both Kenyan citizens as evidenced by the copies of their National Identify Cards which are annexed to the summons (Annexure 'SRC-8').
9. As stated earlier the Applicants are a married couple. They have annexed a copy of their Marriage Certificate Serial No XXXX (Annexure 'SRC-9') indicating that they solemnized their union on February 10, 2012 at the Registrar's Office in Nairobi.
10. The Applicants do not have a biological child of their own hence the desire to adopt a child. They also desire to provide a needy child with a home.
11. The Applicants are both in gainful employment. The 1st Applicant runs an Agrovet business in Karen area of Nairobi County whilst the 2nd Applicant runs a bakery at [particulars withheld] Shopping Centre.
12. The couple have annexed copies of their bank statements as well as copies of a logbook for a vehicle they own (Annexure 'A' to Further Affidavits dated November 1, 2022 as well as and a copy of a Title Deed for property they own in Kitengela. I am satisfied that the Applicants are financially secure and are able to provide for the needs of a growing child.
13. The Applicants are both Christians and intend to raise the child in the Christian Faith. They were both examined by a doctor and found to be mentally and physically fit.



14. The Applicants told the court that their extended family are aware of and support their intention to adopt the subject child. They have appointed the 2nd Applicants sister and her husband as the legal Guardians for the child. The proposed legal Guardians CN and MKK have both signed a consent dated November 29, 2020 indicating their willingness to act as Legal Guardians.
15. The Applicants were both issued with Clearance Certificates by the Directorate of Criminal Investigations proving that neither has a criminal record. (Annexure 'SRC-13')
16. Based on the evidence available I am satisfied that the Applicants are suitable adoptive parents.
17. The subject child was abandoned on May 7, 2021 aged three (3) days old in a field near [particulars withheld] in the Konza area of Machakos County. A Good Samaritan rescued the infant and reported the abandonment at Konza Police Station vide OB Number 1 of May 7, 2021. The Machakos Children's Court then committed the child to Mahali Pa Maisha Rescue Centre for care and Protection on May 11, 2021. On December 17, 2021 the child was released into the custody of the Applicants under a Foster Care Arrangement.
18. Article 14 (4) of the Constitution of Kenya 2010 provides that:-

“A child found in Kenya who is or appears to be less than eight years of age and whose nationality and parents are not known is presumed to be a citizen of Kenya ”
19. The subject child was found abandoned aged only three (3) days old in Machakos County in the Republic of Kenya. The child is therefore presumed to be a Kenyan by birth.
20. Police attempts efforts to trace the biological mother/relatives of the child have not been successful. To date no person has come forward to claim the child. The final Police letter dated November 19, 2021, appears as (Annexure 'SRC-5).
21. Given the fact of his was abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. In circumstances, I do waive the requirement for consent in line with Section 187(1) of the Children's Act 2022.
22. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the Children Act 2022 provides:-

“ (8). (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;” (own emphasis)
23. This is a child who was abandoned a few days after his birth. He faced uncertain future living in childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment.
24. The child has lived with the Applicants since December 2021. This is the only family he knows. I have no doubt that the child has bonded with the applicants whom he views as his parents. I was able to see the child online. He was a healthy baby who was comfortable sitting on the lap of the 2nd Applicant.
25. A Home visit was conducted on October 28, 2022. The applicants resided in a three bedroomed maisonette in Kerarapon. The home is in a secure gated community and is within close distance to other social amenities like Shopping Malls, Schools, Churches and Hospitals.



26. The home was spacious and was found to be a conducive environment to raise a child. The applicants have also employed a Nanny to help them care for the child.
27. I have perused the reports prepared by the Guardian Ad Litem the Adoption Agency, and the Director of Children Services. All three reports were positive and all recommended the adoption.
28. Finally I find that this adoption does serve the best interest of the child. Accordingly, I allow this application and make the following orders:-
 1. The Applicants SMK and Ruth CN are authorized to adopt the child known as SP alias Abandoned Baby Boy Unknown.
 2. Upon adoption the child will be known as BSM.
 3. The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and privileges pursuant thereto.
 4. The Registrar-General is directed to make the relevant entry in the Adopted Childrens Register.
 5. NC and MKK are appointed as the legal guardians for the child.

DATED IN NAIROBI THIS 20TH DAY OF JANUARY, 2023.

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MAUREEN A. ODERO

JUDGE

