



**In re S aka SM (Child) (Adoption Cause E025 of 2022)
[2023] KEHC 18187 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18187 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E025 OF 2022
G MUTAI, J
MAY 31, 2023
N THE MATTER OF THE CHILDREN ACT 2001
AND
IN THE MATTER OF ABANDONED INFANT AKA BABY S AKA SM (THE CHILD)
IN THE MATTER OF AN APPLICATION FOR ORDERS OF
ADOPTION OF ABANDONED INFANT AKA BABY S AKA
SM BY IAO (THE APPLICANT)**

BETWEEN

IAO APPLICANT

AND

KENYA CHILDREN'S HOMES ADOPTION SOCIETY RESPONDENT

JUDGMENT

1. IAO, the applicant herein moved this honourable court vide originating summons dated December 15, 2022 seeking for orders that;
 - a. Pursuant to article 14(4) of the [Constitution of Kenya 2010](#) and section 11 of the [Children Act, 2001](#), this honourable court be pleased to declare the child Abandoned Infant Aka Baby S Aka SM a Kenyan citizen by birth.
 - b. Pursuant to the provisions of Section 159 of the [Children's Act, 2001](#), this honourable court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of Section 158 of the [Children's Act, 2001](#).
 - c. The applicant IAO be authorized to adopt Abandoned Infant Aka Baby Sa Aka SM



- d. Upon the making of the adoption order, the child to be known as PM .
 - e. Upon making the adoption order, DOA And SAO be appointed legal guardians of the child as provided for by the provisions of Section 164 of the [Children Act, 2001](#).
 - f. Upon the making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of birth of the child as March 17, 2020 in the Adopted Children Register as provided for by Section 170 of the [Children Act, 2001](#).
 - g. The costs of this application be costs in the cause.
2. The application is supported by the averments in the statement in support thereof sworn on December 15, 2022. The applicant is an adult Kenyan citizen born in 1978. She was married to one FUN who died on August 17, 2018. At the time of the demise of her husband they didn't have children of their own. The motivation to adopt the baby has been ignited by the desire to be a mother and to nurture a child as she is not able to have biological children due to blocked fallopian tubes.
 3. The Applicant is a business lady in Mombasa with a monthly income of Kshs 100,000 and assets in Migori and Mombasa.
 4. Regarding the child estimated to be born on March 17, 2020, she was born to one NNJ at the Mark Tumaini Medical Centre who abandoned the child with no trace. The matter was reported at Kibicho Police Station on the same day vide OB No 07/xx/xx/2020. The child was taken to Kiambu Level 5 Hospital for medical evaluation, care and protection. She was committed into the legal custody of Limuru Children's Centre at the Githunguri Children's Court vide Care and Protection No 05 of 2021.
 5. Kenya Children's Homes Adoption Society's case committee in its meeting held on February 16, 2022, declared the child free for adoption and a Certificate S/No xxx thereof issued. Subsequently, the child was placed on the care of the Applicant on March 10, 2022.
 6. Upon instituting these proceedings, ABO was on March 13, 2023 appointed guardian *ad litem* pursuant to Chamber Summons Application dated December 15, 2022. The Director of Children Services and the guardian *ad litem* were directed to file their respective social enquiry and assessment reports within 30 days.
 7. Preceding the hearing, the Director Children Services through the County Coordinator for Children Services Mombasa County filed his report dated May 9, 2023 recommending the adoption. Equally the guard *ad litem* filed her report dated May 10, 2023 recommending the adoption.
 8. During the hearing the Applicant urged the court to allow the application to enable her adopt the baby and stated that she understood the consequences of adoption and that it is permanent.
 9. I have considered the application herein, materials in support and evidence by various witnesses. I am now tasked to determine the following issues; whether the baby is available for adoption, whether the applicant is fit to adopt the baby and most importantly whether the adoption is in the best of the child.
 10. The baby herein was born to one NNJ at the Mark Tumaini Medical Centre who abandoned the child with no trace. The matter was reported at Kibicho Police Station on the same day vide OB No 07/xx/xx/2020. The child was taken to Kiambu Level 5 Hospital for medical evaluation, care and protection. She was committed into the legal custody of Limuru Children's Centre at the Githunguri Children's Court vide Care and Protection No xx of 2021.



11. Regarding the baby's nationality, it is clear the baby was abandoned in Kiambu within the Republic of Kenya. The Constitution in Article 14(4) thereof recognizes that a child who is less than 8 years of age, and whose nationality and parents are not known, is presumed to be a Kenyan citizen by birth. In view of this provision the child herein is presumed to be Kenyan citizen by birth.
12. The subject child is above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to section 184(1) (b) of the Children's Act 2022. Further section 185(1) does recognize that any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. I have no doubt the child is fit for adoption.
13. The court is required to assess the suitability of the adoptive parent and in this case the Applicant is a Kenyan citizen thus qualifying the adoption to be a local one. She is 45 years which places her under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with section 186(2) of the Children's Act 2022.
14. She has been described as financially stable as she is a business lady in Mombasa with an estimated monthly income of Kes 100,000.00 She has pieces of land in Migori and Mombasa and also with enough resources necessary for the family support. She is caring, loving and Christian with no criminal record.
15. Since the placement of the minor in into her custody the child has fully bonded with her. She also understands the consequences of adoption and that it is permanent. She appreciates the role of a parent and admit she will treat the baby like her biological child. She is dedicated to providing suitable familiar environment so that the child can thrive and become fruitful member of the society. Therefore, I have no doubt that she has met the necessary requirements to adopt the baby and that she will provide and promote a stable, supportive and nurturing environment for the baby. I am guided by the case of In re B (Baby) [2018] eKLR where the court stated,

“I am of the considered view that weighing all factors and the evidence placed before me the applicants are of sufficient ability to bringing up the child and to furnish her with appropriate support and maintenance within their resource base availed to them.”
16. On the question of whether the adoption is in the best interests of the baby, I am guided by Article 53(2) of the Constitution and Section 8(1) of the Children's Act 2022 which provide that the best interests of a child principal is the primary consideration before making any decision concerning a baby. I am thus of the view that the adoption is in the best interest of the baby.
17. The child herein was abandoned and nobody has come forward to claim her. She is like any other child in need of parental care and guidance. She needs basic necessities like food, shelter, education and clothing. She has fully integrated with the applicant. I am satisfied that this adoption is certainly in the best interests of the child and therefore allow the application.
18. I am also guided by the case of In re HN (Baby) [2020] eKLR where the court stated,

“As to whether the adoption is in the best interests of the baby, the cardinal requirement enshrined under Article 53(2) of the Constitution and Section 4(2) and (3) of the Children's Act is the consideration of the best interests of a child before making any decision affecting the affairs of a child. Considering that the minor was abandoned and has no known relative/s, it will be in her best interest that she gets a home and parents she can refer to as father and mom.”



19. Accordingly, the application is allowed with orders that:
- a. The child is declared a Kenyan citizen by birth;
 - b. The Applicant is authorized to adopt Abandoned Infant Aka Baby S Aka SM who shall henceforth be known as PM ;
 - c. DOA And SAO are hereby appointed legal guardians of the minor in the event the Applicant is unable for any reason to take care of the child;
 - d. The Registrar General is directed to enter the adoption order herein and the estimated birth date of the child as being March 17, 2020 in the Adopted Children’s Register; and
 - e. The guardian ad litem is discharged.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 31ST DAY OF MAY, 2023

GREGORY MUTAI

JUDGE

In the presence of:-

No appearance for the Applicant

Ms. Winnie Migot – Court Assistant

