



**In re SJ (Baby) (Adoption Cause E018 of 2022)  
[2023] KEHC 23052 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23052 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ADOPTION CAUSE E018 OF 2022**

**MW MUIGAI, J**

**SEPTEMBER 28, 2023**

**IN THE MATTER OF THE CHILDREN ACT 2001 AND IN THE MATTER OF BABY SJ**

**IN THE MATTER OF**

**DLB ..... 1<sup>ST</sup> APPLICANT**

**JSB ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The judgment delivered by this Court on 28<sup>th</sup> day of April, 2023 was as follows; this Court finds they are from documents and reports presented Christians, law abiding with no criminal record and have fostered the child. However, in light of the legal background of foreign adoptions and new/amended [Children Act](#), the Court has evaluated the facts of this adoption and finds as follows;
2. The Applicants have not presented documents of their missionary work in Kenya; any documents confirming the existence, scope of work of Christian Services International Ministries in Kenya and the appointment of the Applicants and remuneration from (CSIM).
3. The Applicants have not presented legal documents of registration and/or proprietorship of Mahali Pa Maisha Rescue Home as prescribed by Section 63 (3) of [Children Act](#) 2022 and the extent of the Applicants involvement/running of the home.
4. The Applicants submitted through the Adoption Agencies Change Trust & Buckner Kenya documents relating to the child and Buckner Kenya Adoption Services presented Certificate Declaring the Child Free for Adoption, they have not produced a medical report outlining the child’s special needs and/or unique health condition which the Applicants have the capacity to facilitate medical and cognitive development including treatment abroad for this Court to consider.
5. Form C5- The Court Order from the Children’s Court at Kajiado committing the child SJ to Mahali Pa Maisha is not the Court Order compared to CM’s Court Guardianship Order attached.



6. Compliance with Section 191 (d) of *Children Act* 2022 reports from their Home Country to confirm that the Applicants have been authorized and recommended as persons who are fit, including being morally fit and financially capable, to adopt a foreign child by a competent government authority or Court of competent jurisdiction in the country where they intend to reside with the child immediately after the making of the adoption order.

In its disposition this Court directed thus;

“On the basis of a careful examination of the documents presented before this Court at this stage, this Court has exercised judicial discretion to decline granting of adoption of the child to the Applicants at this stage under Section 186(7) *Children Act* 2022 pending compliance with the above raised pertinent issues.

The Guardianship order granted to the Applicants over the child issued on 21/5/2021 remains in force as a valid and legal order of the Court.”

### **Notice Of Motion**

7. The Applicants filed an application under certificate of Urgency dated 17<sup>th</sup> May, 2023 and sought the following orders:-
1. Spent
  2. That the judgment entered on 28/04/2023 be reviewed and the Court reconsider the reliefs sought in the Originating Summons dated 18/10/2022 and do proceed to issue the necessary orders.
  3. The costs of this application be provided for.
8. The Application is supported by the Applicants Supporting Affidavit sworn on 17<sup>th</sup> May, 2023 deposing as follows:
- a. The Applicants are the founders and directors of Mahali Pa Maisha Infant and Rescue Centre and the Kenya Registered Trust of ICS Ministries Inc. having established the same in the year 2011.
  - b. In compliance with Section 63 (3) of the *Children's Act* 2022 Mahali Pa Maisha Inc. is registered under the Ministry of Labour and Social Protection under Registration Number NCCS, C No.0022 and carries on its operations on leased property at Kajiado.
  - c. The child SJ was diagnosed with a condition called Ig-E Hypersensitivity which impact his whole respiratory system hence the need of specialized medical treatment which he has been regularly receiving at the Cincinnati Children's Hospital in the United States and which the child has accessed vide Court orders for travel issued to the Applicants who are the legal guardians of the child.
  - d. The child SJ was placed at Mahali Pa Maisha on 28/03/2019 for 3 years which placement was to expire on 27<sup>th</sup> March, 2022. Thereafter the Applicants applied for Legal Guardianship of the child.
  - e. The Applicants' mother country do not have any objection to the Application of adoption of child Shadrach Jason.



9. The Applicants herein, DLB – Republic Of Kenya Foreigner Certificate No. 29XXXXX - Tel No. 0719XXXXXX And JSB - Republic Of Kenya Foreigner Certificate No. 29XXXXX– Tel No. 073XXXXXXXX Both American Citizens But Residents Of The Republic Of Kenya Since The Year 2007. They Are Husband And Wife And Were Married On 19<sup>th</sup> June, 1982 In The State Of Indiana Usa As Per Attached Copy Of Marriage Certificate. The Applicants Are Currently Residents Of [Particulars Withheld] Within Kajiado County. The Applicants Are Both Directors Of Christian Services International Ministries (csim).
10. EGO was appointed by this Court as Guardian ad Litem on 9/02/2023.
11. The child (SJ) who is the subject of the present adoption proceedings was born on 11<sup>th</sup> June, 2016 at [Particulars Withheld] by PW. The said PW after delivery abandoned/left the infant under the care of the nurse on duty to seek Mpesa services but did not return.
12. The minor was committed to the care of the home through the Children’s Court at Kajiado vide Committal Case and Protection Case No.15/2016. The minor was freed for adoption by the Buckner Kenya Adoption Society Services in a meeting held on 22<sup>nd</sup> February, 2017 vide a Certificate declaring a child free for adoption Serial No. 0179.
13. Pursuant to Section 185 (2) (b) of the *Children Act*, 2022 the Kenya Children’s Home Adoption Society, the relevant Adoption Society, Change Trust Adoption Society prepared and filed in Court Report dated 5<sup>th</sup> October, 2022 in respect of the proposed adoption of the child by the Applicants. Mr. Muteru Njama, a Managing Trustee of said Adoption Society appeared in Court on 21/03/2023. The Adoption Society recommended Adoption.
14. The Director of Children Services through a Report dated 20/03/2023 in respect of the proposed adoption of the child by the Applicants was prepared by Emily Kimanzi Machakos Sub County Children Officer. The said Emily Kimanzi appeared in Court on 21/03/2023 in respect of these proceedings. The adoption was recommended.
15. The *Guardian ad Litem*, EGO filed his Report dated 18<sup>th</sup> October, 2022 in support of these Adoption proceedings and recommended the adoption.
16. The Legal Guardian EN filed her Affidavit of Legal Guardian sworn on 22<sup>nd</sup> March 2023. She stated that she understood her duties as a Legal Guardian in case of any eventuality.

### **Analysis**

17. Section 183 (4) (c) *Children Act* provides "foreign adoption" means an adoption in relation to which —
  - (i) the adopting parent or parents are Kenyan nationals with dual citizenship;
  - (ii) the adopting parent(s) are foreign nationals whether or not they reside in Kenya;
  - (iii) the adopting parent or parents are not Kenyan nationals but are biologically related to the child; or
  - (iv) the adopting parent or parents were once Kenyan nationals but have lost their nationality by operation of the law of the host country to which the prospective parent or parents have a nationality.
18. This Court finds that the Applicants have now complied with the Orders of the Judgment dated 28/04/2023 being the following;



- a. The Applicants have now presented documents of their missionary work in Kenya vide the Certificate of Incorporation dated 13/01/2015.
- b. The Applicants have now presented legal documents of registration and/or proprietorship of Mahali Pa Maisha Rescue Home vide CSI Trust Deed dated 13/01/2011.
- c. The Applicants submitted through the Adoption Agencies Change Trust & Buckner Kenya documents relating to the child. The Applicants have now produced a medical report outlining the child's special needs and/or unique health condition vide a Report from Cincinnati Children's Hospital, USA by Dr. Amal Assa'ad dated 27<sup>th</sup> February, 2023 as well as Dr. Githang'a a Pediatrician/Cardiologist dated 14<sup>th</sup> April, 2022.
- d. Form C5- The Court Order from the Children's Court at Kajiado committing the child SJ to Mahali Pa Maisha as well as the CM's Court Guardianship Order attached.
- e. Compliance with Section 191 (d) of *Children Act* 2022 reports from their Home Country to confirm that the Applicants have been authorized and recommended as persons who are fit, including being morally fit and financially capable, to adopt a foreign child by a competent Government authority or Court of competent jurisdiction in the country where they intend to reside with the child immediately after the making of the adoption order by Mr. Ethan Manning the State Representative, State of Indiana dated 16<sup>th</sup> May, 2023 availed.

### **Disposition**

1. On the basis of a careful examination of the documents presented before this Court in compliance with Judgment delivered on 28/4/2023, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application.
2. The Applicants, DLB – Republic Of Kenya Foreigner Certificate No. 29XXXXX - Tel No. 0719XXXXXX And JSB - Republic Of Kenya Foreigner Certificate No. 29XXXXX– Tel No. 073XXXXXXXXX That The Applicants Be Authorized To Adopt Baby SJ And The Baby Shall Be Known As SJ Bell.
3. The child's date of birth is was born on 11th June, [Particulars Withheld] , Nairobi Kenya and the place of birth shall be Nairobi, County.
4. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
5. EN is appointed the Legal Guardian of the child should such eventuality arise.
6. This Court directs the Registrar General to duly enter this order in the Adoption Register.
7. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security within one year of the Adoption in the best interest of the child.
8. The *Guardian ad litem* is hereby discharged.

It is so ordered.

**DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2023 (PHYSICAL/VIRTUAL CONFERENCE).**

**M. W. MUIGAI**

**JUDGE**



In The Presence Of:

Mr. Muia - For The Applicants

