



REPUBLIC OF KENYA



**In Re Adoption of AW Alias SK (Baby) (Adoption Cause E117 of 2021)
[2022] KEHC 12130 (KLR) (Family) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 12130 (KLR)

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

FAMILY

ADOPTION CAUSE E117 OF 2021

LA ACHODE, J

APRIL 28, 2022

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

IN THE MATTER OF THE APPLICATION FOR THE

ADOPTION OF BABY AW ALIAS SK (MINOR)

IN THE MATTER OF

ALS 1ST APPLICANT

VNL 2ND APPLICANT

JUDGMENT

1. The Applicants through the Originating Summons dated 25th June, 2021 sought various orders in their intention to adopt a male minor baby AW AKA Baby SK. The Applicants are a married couple who have been in a monogamous marriage since September 9, 2017 as is evinced by the Marriage Certificate of Serial No. 16xxx. They are blessed with one biological daughter named WWL. The couple has simultaneously brought before this Court another summons intending to adopt another minor in Adoption Cause No. E118 of 2021.
2. TJM, CKN and WWL are the proposed legal guardians of the child. They gave their consent to be so appointed through an Affidavit sworn by TJM and CKN dated June 20, 2021 while WW Lusala signed a separate Affidavit dated 20th June, 2021.
3. The Applicants are both gainfully employed. ALS works for the [Particulars Withheld] while VNL is employed by the National Police Service and is deployed at the [Particulars Withheld]. They both reside in [Particulars Withheld] and profess the Christian faith.
4. The minor they wish to adopt was abandoned at birth having been born on June 16, 2018 at the Thika level 5 hospital. The minor is believed to have been born to AWK and SK who abandoned the minor



at the hospital after birth. The matter was reported at the Thika Police Station and recorded vide OB NO. xxxxx. The minor was then committed to the care and protection of Nairobi Rescue Children's Home on the July 5, 2018 through Protection and Care case No. CS/xxxxxxx by the Thika Magistrate Court. He was later transferred to the Orphan Children Center in Thika by The Chief Magistrate Court in Thika on the November 21, 2019 through Protection and Care case No. 103/2018.

5. On November 25, 2019 the Thika Police Station issued a final police letter indicating that the biological parents of the minor had not been traced, nor did anyone come forward to claim the child. On the October 8, 2020 the Buckner Kenya Adoption Agency conducted a contact tracing to try and determine the whereabouts of the biological parents of the minor, which efforts proved futile. The agency declared the minor free for adoption on November 13, 2020 and a Certificate of Serial No. xxx issued. The Applicants entered into a foster care agreement with Buckner Adoption Services on the March 5, 2021 and has been in their continued care and custody since then.
6. This Court appointed CM as the guardian *ad litem* on the December 2, 2021 and she filed a report on this matter dated January 25, 2022. Which indicates that the child has his own bed and enjoys watching cartoons and plays well with his siblings. He loves playing with car toys and loves swimming and even has a favourite cousin. She observed that the child who had a walking deformity went to therapy and is now able to walk straight. She indicated that the child would benefit from being adopted by the Applicants. The guardian *ad litem* recommended the adoption of the minor by the Applicants.
7. The office of The Directorate of Children's Services conducted a home visit with the Applicants and filed a report on January 13, 2022. The report recommends the adoption of the minor by the Applicants. The report indicates that the Children's Officer noted that the child had bonded well the Applicants, their biological daughter and other relatives. The report also indicates that the minor would benefit from the adoption as he would grow and develop in a loving and conducive environment as opposed to living in an institution as an abandoned child. Further, that the Applicants have met the statutory requirements for adoption as provided under the *Children's Act* No. 8 of 2001.
8. Article 53(2) of the *Constitution*, provides the overarching principle which must apply whenever any decision concerning a child is to be considered. The said Article provides that:

“ A child's best interests are of paramount importance in every matter concerning the child.”

This principle finds a firm place in the law in Section 4(2) and 4(3) of the *Children's Act* No. 8 of 2001 and is echoed by Article 4 of the *African Charter on the Rights and welfare of the Child* which provides that:

“ in all actions concerning the child undertaken by any person or authority, the best interest of the child shall be the primary consideration ”

9. This being a local adoption, it is my opinion that the Applicants have fulfilled the requirements of the *Constitution* of Kenya and The *Children's Act*. The reports before this Court also indicate that it is in the best interest of the minor to be adopted by the Applicants as it would allow for the child to grow and develop in a loving and conducive environment. The Applicants are both 53 years old, having been born in 1968. They therefore meet the legal requirement of being older than 25 years and younger than 65 years, and 21 are years older than the minor they wish to adopt as required under Section 158(1) of the *children's act*. The Child was present virtually in Court during the hearing and appeared to have bonded well with the Applicants.



10. The Applicants are both of sound mind and are Physically fit as demonstrated by the medical report compiled at the Kenyatta National Hospital on the October 9, 2020, as required under Section 158(3) (a) of the *Children's Act*.
11. The Applicants have no criminal records according to the Police Clearance Certificate No. PCC-xxxx and PCC-xxxx respectively, as required in fulfillment of Section 158(3)(b) of the *Children's Act*
12. From the foregoing, this Court is of the considered view that is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, I allow the orders sought through the originating summons dated June 25, 2021 and order as follows:
 - i. The Applicants ALS and VNL be and are hereby allowed to adopt Baby AW AKA SK who shall henceforth be known as AML.
 - ii. His date of birth shall be June 16, 2018.
 - iii. He was born in Kenya, and his place of birth shall be in Kiambu.
 - iv. TJM, CKN and WWL are hereby appointed as the legal guardians in the event that the Applicants die, or are incapacitated by ill health.
 - v. The Registrar General be and is hereby directed to enter this order in the Adopted Children's Register.
 - vi. The Director of Immigration be and is hereby authorized to issue the child with a Kenyan Passport.
 - vii. The guardian *ad litem* is hereby discharged.

SIGNED, DATED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF APRIL, 2022

L.A ACHODE

HIGH COURT JUDGE

In the presence of..... Advocate for the Applicants

