



**In re Baby BIS aka SNR (Adoption Cause E155 of 2022)
[2022] KEHC 18115 (KLR) (Family) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 18115 (KLR)

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

FAMILY

ADOPTION CAUSE E155 OF 2022

PM NYAUNDI, J

JUNE 30, 2022

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

2001

AND

IN THE MATTER OF AN APPLICATION FOR

ADOPTION OF BABY BIS AKA SNR

JUDGMENT

1. The applicants, SKR and EAA vide Originating Summons dated August 1, 2022 have made an application for the adoption of Baby BIS aka SNR the child herein.
2. The applicants have been married since September 26, 2009 and have attached a copy of marriage certificate number 2xxxx7. They wish to adopt the baby as they are not able to get their own biological child but most importantly to give love to a child and raise her in a loving home.
3. The matter proceeded for hearing via *viva voce* evidence on the Teams virtual platform on the June 15, 2023.
4. The applicants are Kenyan Citizens and of the Christian faith. They aver that they have the financial means and capability to take care of the Child. The 1st applicant works as a businessman and photographer, and the second applicant works as Banker. They have had custody of the child since September 10, 2021. They reside in Lang'ata. They fully understand the consequences of an adoption order.
5. The child is presumably born on December 30, 2020 at Ojolla Sub Location. The minor was found abandoned on December 31, 2020 near Capitol Hill Bar and Restaurant near Kisian Junction along Kisumu-Busia road in Ojolla Sub Location. She was rescued by one good samaritan; security officer from Pride King Security working at Capitol Hill Bar and Restaurant Mr Charles Otieno Orango of Tel No0xxxxxxxx5/ 0xxxxxxxx1.



6. The matter was reported at Maseno Police Station, where the incident was booked under OB No 19/31/12/2020 and the minor referred to Jaramogi Oginga Odinga Teaching & Referral Hospital for medical attention on the same day. The Sub County Children's Officer- Maseno was involved and sought a vacancy at New Life Home Trust-Kisumu for care and protection and it was availed.
7. The child was discharged from Jaramogi Oginga Odinga Teaching & Referral Hospital and was temporarily admitted at Mama Ngina Children's Home pending committal at New Life Home Trust-Kisumu where she was admitted on January 27, 2021.
8. The minor was committed to New Life Home Trust-Kisumu by Winam Children's Court on January 27, 2021 vide care and protection case E011 of 2021 for a period of three years. The Maseno police station and Kisumu West Sub-County Children's officer confirmed that no one went to their stations to claim for the abandoned child and their efforts to trace the kindred of the child have been futile.
9. Peter Ndotono from Children's Homes Adoption Society attended court. He confirmed that prior to the hearing of the adoption application, Kenya Children's Home Adoption Society prepared and filed a report dated October 4, 2022 and issued a certificate serial No 795 declaring the child free for adoption. The Court appointed a guardian *ad litem* I M.
10. The guardian ad litem, I M was present in court. She confirmed that she visited the applicants and the child at their home and observed that they have bonded well, and the child is well taken care of. She submitted her report dated February 27, 2023 wherein she recommends that the applicants be allowed to adopt the baby.
11. Mr Ezelkiel Kimani for the Directorate of the Children's services attend court. The report was prepared by, Carolyne Olilo. It is dated February 28, 2023. The report established that the child was abandoned by his mother after birth at Capitol Club Kisian having been found by a good samaritan by the name of Charles Otieno on December 31, 2020. This matter was reported and recorded vide OB 9/31/12/2020 and confirmed by Maseno Police Station on January 26, 2021. The child was referred for a check-up at Jaramogi Oginga Odinga Teaching and Referral Hospital and later admitted to New Life Home on January 27, 2021. The report was counter-signed by Nancy Waswa.
12. The proposed legal guardian TJAA attended court and confirmed she is willing to take up the role of legal guardian. She is a sister to the 2nd applicant. She supports the adoption.
13. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child's adoption. Section 186 of the [Children Act, 2022](#) provides.

The court may make an adoption order on application

- (1) by-
 - a. A sole applicant; or
 - b. Two spouses jointly.
- (2) The court shall not make an adoption order in any case unless—
 - a. The applicant has attained the age of twenty-five years, but is not above the age of sixty-five years: and
 - b. The applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.



- (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father, or relative of the child.
14. The applicants are aged 49 years and 43 years respectively.
15. Article 53 of the *Constitution of Kenya, 2010* provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child's Best interests are of paramount importance in every matter concerning the child

16. This principle is restated Under Section 8 of the *Children Act, 2022* which provides

Best interests of the child.

In all actions concerning children, whether undertaken

- (1) 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.

Section 194 (1) (c) of the Act also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain and educate the child;

17. In view of the foregoing, the court is of the considered view that it is in the child's best interest to be adopted by the applicants. Accordingly, I allow the prayers sought in the originating summons dated August 1, 2022 and order as follows:
- i. The applicants SKR and EAA be allowed to adopt baby BIS aka SNR.
 - ii. The child to be known as SNR.
 - iii. The child's date of birth is December 30, 2020 and his place of birth is Jaramogi Oginga Odinga Technical and Referral Hospital, Kisumu County.
 - iv. The child be presumed to be a Kenyan citizen by birth.
 - v. TJAA is hereby appointed as legal guardian of child.
 - vi. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children.
 - vii. The Guardian *Ad litem* is discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 30th DAY OF June, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Court Assistant Karani



Adoption Cause No. E196 OF 2022 JUDGMENT

