



**SW v YE (Adoption Cause E105 of 2022) [2022] KEHC 13374 (KLR)
(Family) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E105 OF 2022
MA ODERO, J
SEPTEMBER 23, 2022**

BETWEEN

SW APPLICANT

AND

YE RESPONDENT

JUDGMENT

1. Before this court is the originating summons dated 1st July 2022 by which the Applicant YE seeks the following orders:-

- “ 1. That the Applicant be and is hereby authorized to adopt SW , a minor herein.
- 2. That upon adoption, the child be known as SWE.
- 3. That the Registrar General be ordered to make appropriate entries in the Adopted Children’s Register in respect of baby SWE.
- 4. That the court be pleased to appoint AK and CNK as the legal guardians of SWE upon granting of the adoption orders.
- 5. That baby SWE be considered a Kenyan Citizen.
- 6. That the court be pleased to make any further orders it deem necessary.”

2. The application was supported by the statement of even date sworn by the Applicant. The matter was canvassed by way of oral evidence on the virtual platform.



3. The Applicant is a Kenyan citizen who is married to a German National. She has no biological children due to medical complications. The Applicant told the court that she decided to adopt a child in order to fulfil her lifelong desire to be a mother and to give a needy child a home.
4. The Applicant told the court that she was introduced to the Childs mother by her Aunt. The mother who had five (5) other children had fallen pregnant after an unplanned one night stand and felt incapable of caring for another child.
5. The Applicant stated that she fully understood the legal implications of an adoption order. She undertook to accord the subject child all he rights due to a biological child including the right to inherit. The applicant also stated that her husband who resides in Germany fully supports her intention to adopt the child.
6. The legal prerequisites for Adoption are set in Section 156(1) of the Children’s Act 2001, which provides as follow: -

“ 156(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”
7. The Subject child was born in Ole Kasasi, Kajiado County on 15th November 2021. A copy of the Childs Birth Certificate Serial Number xxxx is annexed to the summons. She is now aged ten (10) months old which is above the six (6) week age limit provided for in law.
8. Kenya Childrens Home Adoption Society which is a registered Adoption Agency have annexed to their report the original copy of their certificate Serial Number xxxx dated 15th June 2022 declaring the child Free of Adoption. Accordingly, I am satisfied that all the legal prerequisites for an adoption order have been met.
9. The duty of this court is to analyze the evidence presented before it to determine whether the Applicant is a suitable adoptive parent. The Applicant is a Kenyan citizen as evidenced by the copy of her Kenyan Passport No. xxxx issued on 16th October 2019, which is annexed to the summons (Exhibit 2).
10. The Applicant is married to one KE who is a German National. They solemnized their union at the office of the Registrar in Nakuru. A copy of their marriage Certificate Serial Number xxxx is annexed to the summons (Exhibit 4). The couple have no children together hence the Applicants desire to adopt a child.
11. The Applicant told the court that she is a businesswoman and has resided in Germany for about thirty (30) years. She has annexed copies of her Bank Statements for an account held at Bank of Africa (Exhibit 11) proving that the Applicant is financially stable. The Applicant has also annexed a copy of a Title Deed for a plot which she owns at Ole Kasasi Trading Center.
12. Though married the applicant is making this application as a single adoptive parent. Her husband Mr E has sworn an Affidavit dated 16th May 2022 consenting to the adoption of the child by his wife (Exhibit 10).
13. The Applicant is a Christian and intends to raise the child in the Christian Faith. She has annexed to her summons a recommendation letter dated 10th May 2022 written by Father JN, the Father in charge of [Particulars Withheld] Catholic Parish Kandisi (Exhibit 13).
14. The Applicant has also annexed a clearance letter issued to her by the Director of Criminal Investigations (Exhibit 9) proving that she has no criminal record.



15. The Applicant was examined by a Doctor and was found to be medically fit and able to raise a young child. She told the court that her family fully support her intention to adopt the subject child. Indeed the Applicant has appointed her nephew and his wife as the legal guardians for the child. The legal Guardians AK and CNK have each sworn consents dated 1st July 2022 confirming their willingness to act as legal guardians.
16. From the evidence presented to this court I am satisfied that the Applicant is a suitable adoptive parent.
17. The subject child is a girl child who was born in Kajiado County on 15th November 2021. The child was born to one JMM a single mother of five (5) other children. The Childs mother testified in court. She told the court that the child was conceived as the result of an unplanned pregnancy arising from a one night stand with a man whose identify she did not know.
18. Following the conception of the child, the mother became depressed due to anxiety about her future. Upon delivering the child, the mother handed over the baby to the Applicant whom she had been introduced to by an Aunty. They later approached the adoption Agency seeking to have the adoption legalized.
19. Section 158(4)(a) of the [Children Act](#), 2001 provides as follows:-

“ (4) Subject to section 159 an adoption shall be accompanied by the following written consents to the making of an adoption order in respect of any child-

(a) the consent of every person who is a parent or guardian of the child, or who is liable by virtue of any order or agreement to contribute to the maintenance of the child.”
20. The Childs biological mother confirmed that she has voluntarily given up her child for adoption and has consented to the same. She confirmed that she was counselled by the Adoption Agency. The mother told the Agency that she had no financial capacity to care for the child and the man she lives with has rejected the baby. The mother has sworn before a Commissioner of Oaths an Affidavit of consent to the Adoption dated 19th May 2022 (Exhibit 19). She confirmed to the court that she fully understands that an adoption order once made is irreversible.
21. Based on the evidence of the mother and her Affidavit, I am satisfied that the necessary consent has been sought and obtained.
22. The child having been born in Kenya to a Kenyan mother is a citizen of Kenya by birth. The Childs biological father remains unknown and in the circumstances, I waive the requirement for his consent.
23. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 4(2) of the [Children Act](#) 2001 provides:-

“ (2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”. (Own emphasis)
24. This is a child whose biological mother is unable and/or unwilling to keep the child. The mother voluntarily handed the baby over to the Applicant at the age of two (2) months. The child has lived with the Applicant since then and they have bonded. I saw the baby online. She was sleeping peacefully in her cot.



25. A Home visit was conducted by the Childrens Officer. The Applicant resides in a spacious four bedroomed house in Rongai with her mother and her brother. The house was well furnished and was found to be suitable environment for the child.
26. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem, and the Director Childrens Services. All three reports are positive and all recommend the adoption. It has been discovered that the child is now ailing with a hole in the heart. A medical report dated 27th April 2022 prepared by Dr Pius Opendi Ochola of the Tabernacle International Hospital confirms that the child requires urgent surgery to rectify the situation. The Applicant is ready and willing to avail the required medical treatment.
27. I find that this adoption does serves the best interests of the child. Accordingly, I do allow this application and make the following orders:-
- (1) The Applicant YE is authorized to adopt the child known as SW.
 - (2) Upon adoption the child will be known as SWE.
 - (3) The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
 - (4) AK and CNK are appointed as the legal Guardians of the child.

DATED IN NAIROBI THIS 23RD DAY OF SEPTEMBER 2022.

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MAUREEN A. ODERO

JUDGE

