



REPUBLIC OF KENYA



**In re Baby SM (Minor) (Adoption Cause E013 of 2022)
[2022] KEHC 15763 (KLR) (22 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E013 OF 2022
MW MUIGAI, J
NOVEMBER 22, 2022
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY SM (MINOR)**

JUDGMENT

1. The applicant, JMM (“the applicant”) sought by their application to be allowed by this court to adopt SM (hereafter “the child”).
2. Vide Originating Summons application dated June 22, 2022 the applicant sought among other orders, that WMLK be appointed as the child’s Guardian Ad Litem, that the Director of Children’s Services to conduct investigations as to the suitability and fitness of the applicant to adopt the child and submit a report. WMLK was appointed by this court as Guardian ad Litem on 20/09/2022.
3. The applicant further sought an order that upon adoption of baby SM the child be known as ASM and she be considered as a Kenyan citizen.
4. The child (SM) who is the subject of the present adoption proceedings was presumably born on January 7, 2021 in (withheld) Ward. It was reported by one Gathathai the Ass. Chief Thayu sub-location on January 7, 2021 that there was an infant who had been dumped in a pit latrine. The police rushed to the scene and together with members of the public managed to retrieve a life female infant from the said latrine. The infant was rushed to Nakuru level 5 Hospital for treatment and further care.
5. The matter was recorded vide OB No.xxx/xx/1/2021 at Kiugoini police station. The Sub - County Children’s Officer – Nakuru North was involved and sought a vacancy at New Life Home Trust – Nakuru for care and protection. The infant was admitted at the said home on January 16, 2021.
6. The infant was committed to New Life Home Trust – Nakuru as in need of Care and Protection at Nakuru Children’s Court on March 10, 2021 for a period of three years. The minor was freed by the Kenya Children’s Home Adoption Society’s Case Committee in its sitting of October 27, 2021 and a Freeing Certificate Serial No. xxxx issued pursuant section 156(1) of the *Children’s Act* 2001.



7. The following documents were availed from Kenya Children’s Home Adoption Society’s for baby SM ;
 - Minor’s photo
 - Age assessment form
 - Initial police letter
 - Referral letter by the sub- County Children’s office- Nakuru North
 - Release of abandoned child
 - Pre-admission assessment form
 - Admission form
 - Committal order
 - Final Police letter
 - Final letter by sub-county children officer – Nakuru North

8. Pursuant to section 156(1) of the *Children Act*, Kenya Children’s Home, the relevant Adoption Society, prepared and filed in Court a favorable report in respect of the proposed adoption of the child by the applicants. Another report in respect of the proposed adoption of the child by the applicants was prepared by the Director of Children’s Services, and this report was similarly in favor of the proposed adoption. The Guardian Ad Litem, WMLK , also filed the statutory report pursuant to section 160(2) of the *Children Act* in which she noted that the proposed adoption of the child by the applicants would be in the best interests of the child.

9. The Kenya Children’s Home filed their report dated 11/10/2022. On 18/10/2022 Mr. Ndotono from the Agency appeared in Court and confirmed that the child subject of these proceedings was found dumped in a pit latrine afar birth. The child was decreed free for adoption on 27/10/2021. According to the report the applicant herein approached the Kenya Children’s Home Adoption Society office on 11/10/2019 with an intention of being ratified for placement with a baby girl aged between six months to two years. Interview session was conducted and a home study was made at her resident in Ongata Rongai. She was approved as a suitable potential adoptive parent by the society’s case committee sitting of 19th May, 2021 for placement with a child as per her description.

10. The applicant was placed with the minor on 22nd December, 2021 after successful bonding at the said home. Follow up visits were conducted by the Children Home Personnel on 21st January, 2022 and on February 25, 2022, April 1, 2022 and May 10, 2022. The minor was freed for adoption by the Kenya Children’s Home Adoption Society’s Case Committee in its sitting of October 27, 2021 and a freeing certificate Serial No. 805 was issued. The applicant resides in Kitengela in a rented two bedroomed permanent house. The applicant is self-employed and earns a net income of kshs.50,000/-. The Kenya Children’s Home Adoption Society Case Committee analyzed the case and was satisfied that the applicant in this cause proceed to Court to finalize the process. The adoption was recommended.

11. The Director of Children Services through a Report dated 12/10/2022 in respect of the proposed adoption of the child by the applicant was prepared by Emily Kimanzi the Machakos Sub- County Children’s Officer. On 18/10/2022 the said Officer appeared in Court in support of this Adoption. The report contains family and professional background information of the Child’s Adoptive Parent. The Adoptive parent was previously married to one Fredrick Mbithi from 2009 to 2016 but the marriage broke due to her husband desire to have a child. She filed for a divorce in 2021 and it was granted. The applicant left her marriage due to lack of a child hence her desire to adopt to give a needy



child a family full of love. The applicant's extended family are in full support of this adoption and have embraced the minor and are very happy to have her as a member of the family.

12. The applicant owns a furniture business, she is a specialist in interior design. She owns 1/8 area and 1/2 acre pieces of land in Bisil and Machakos County respectively. The applicant inability to sire a child caused the breakup of her marriage hence having a minor in her space has given her a sense of purpose, joy and fulfillment. The Directorate recommends the adoption as the minor has been declared free for adoption by a registered Adoption Agency, the bonding has been successful, the applicant has the support of the family, has no criminal record and it is for the minors best interest so that she can have a family to belong to.
13. The Guardian ad Litem, WMLK filed her Report on October 11, 2022 in support of these Adoption proceedings. She stated that on observation the child has bonded well with the prospective adoptive parent. She has visited the family on several occasions. The child and the adoptive parent have bonded well. The legal guardians who have agreed to take care of the child in case of any eventuality are a married couple called Mr. & Mrs Nathan Musila (the applicants brother and his wife). They recommended the adoption.
14. The Legal Guardians Nathan Musila and Judy Mwende Joel filed their Affidavit and Consent letter dated 22/06/2019. Nathan Musila is a biological brother to the applicant while Judy Mwenda Joel is his wife. The said documents stated that they understand that as the legal guardians they are expected to take over parental responsibility over the minor in case of death of the applicants or total incapacitation and disability. They recommend the adoption.
15. All the statutory reports that have been filed in respect of the proposed adoption of the child by the applicant have recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the applicant has fulfilled all the legal requirements relative to the adoption of the child.
16. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children's Services established that the applicant is financially and socially stable and has emotional capability to provide for the upkeep and education of the child and give parental care. This Court observed the applicant with the child in Court and it was evident that in the period that the applicant has had the custody of the child, the child has bonded well. The child considers the applicant to be her mother.

DISPOSITION

1. On the basis of a careful examination of the documents presented before this court as well as the observations made therein, 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 applicant, JMM is hereby allowed to adopt Baby SM . Henceforth, the child shall be known as ASM .
3. The Child's date of birth is January 7, 2021 and the place of birth shall be Nakuru County.
4. The child is a Kenya Citizen by birth and entitled to all rights of a Kenyan citizen.
5. Nathan Musila and Judy Mwende Joel shall be the legal guardians of the child should such eventuality arise.
6. This court directs the Registrar General to duly enter this order in the Adoption Register.
7. The Guardian ad litem is hereby discharged.



It is so ordered.

DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS THIS 22ND DAY OF NOVEMBER, 2022 (VIRTUAL CONFERENCE).

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF:

JMM - THE applicant

GEOFFREY/PATRICK - COURT ASSISTANT(S)

