



REPUBLIC OF KENYA



KENYA LAW
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**In re SAS (Baby) (Adoption Cause 5 of 2020)
[2021] KEHC 9786 (KLR) (26 February 2021) (Ruling)**

Neutral citation: [2021] KEHC 9786 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE 5 OF 2020
JN ONYIEGO, J
FEBRUARY 26, 2021
IN THE MATTER OF BABY SAS**

IN THE MATTER OF

FSGM APPLICANT

RULING

1. Vide an Originating Summons dated 5th June, 2020, SFA and FSGM hereinafter referred to as the 1st and 2nd Applicants respectively, moved this court for orders that; This application be certified urgent and the same be heard *ex parte* in the first instance; the requirements of Section 158 (4) (a) of the *Children's Act* be waived as provided for by Section 159 (1) of the Act; Salma Salim Rashid be appointed as guardian ad litem in this case; the applicants be authorized to adopt baby SAS a minor who henceforth shall be known as Swaleh Abdalla Magan; Farida Mohamed Omar be appointed the legal guardian of the child; the Director of Children Services do investigate the case and file a report and, the Registrar General do enter the adoption in the adopted children's register.
2. Before the hearing of the substantive originating summons, the applicant filed a notice of motion dated 14th October, 2020 seeking orders that;
 - i. Spent;
 - ii. That this court do issue directions that the matter be heard via on line platform and dispense the need for the applicants to appear in court physically on 21st October, 2020 when the matter comes up for hearing, and all subsequent hearings.
 - iii. That this court do issue directions that the matter be heard and determined on line via virtual platform and dispense the need for the applicants to appear in court physically for hearings.
 - iv. That the Honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.



3. The application is premised upon grounds stated on the face of it and an affidavit sworn by Susan Musau an Advocate seized of this matter. She averred that the application herein is a kinship adoption given that the 1st applicant is a biological mother to the baby while the second applicant is a husband to the 1st applicant. She annexed a copy of birth certificate to the minor and a marriage certificate between the applicants to prove that they are a couple.
4. She further averred that the 2nd applicant is a Kenyan and UK adult citizen and currently self-employed in UK. That they have two other biological children with whom they are living in UK.
5. She further stated that due to Covid 19 pandemic, the applicants are not able to travel to Kenya to prosecute the application. That the minor herein is desirous of joining the applicants in UK and therefore in the best interest of the minor that the application be allowed and proceedings be conducted virtually.
6. During the hearing, M/s Makau literally reiterated the averments contained in the affidavit in support. I have considered the application herein and the averments contained in the affidavit in support. The applicants are basically seeking exemption from attending court physically citing travelling challenges due to Covid.
7. Pursuant to the Chief Justice practice directions made on 4th March,2020 on electronic case management, a court presiding over a matter has the discretion to conduct proceedings virtually if the interest of justice so demands.
8. Gazette notice No. 2357 of 4th March,2020 the Chief Justice issued practice directions on electronic case management. Regulation No. 6 on use of technology in judicial proceedings provides at Sub paragraph 2 that;

“In every judicial proceedings, the court and the parties to the case shall employ the use of technology to appreciate the proceedings and make them more efficient.

Sub-paragraph 3-The technology referred to in sub- paragraph 2 shall include

 1. Filing
 2. e services of documents
 3. Real time transcript devices
 4. Real time digital display devices
 5. Video and audio conferencing
 6. Digital import devices and
 7. Computer in the court
9. In the instant case, the adoption society have already declared the child free for adoption. A certificate of declaration No 002119 was issued on 21st August, 2019. There is no dispute that the minor’s mother is married to the 2nd applicant. Since 2010, the couple has been living together with the minor in Kenya.
10. I have taken judicial notice of the travel advisories currently in force between UK and many countries due to Covid -19. As stated, it will not be possible to secure physical attendance of both applicants who are currently in UK. Therefore, the application and objective of the Chief Justice’s practice directions aforesaid comes in handy.



11. It is my finding that it is in the best interests of the child that this proceedings be expedited to enable the child if successful join the mother and adoptive father in UK. I do not find any prejudice in these proceedings being conducted virtually and more particularly during this period of Corona travel advisory measures. Accordingly, it is my holding that the application herein is merited and the same is allowed as prayed with a caveat that should the court find it necessary, it shall not hesitate to demand parties' physical appearance.
12. For avoidance of doubt, the application dated 14th January, 2020 is allowed with orders;
 - a. That the matter shall be heard via on line platform and the need for the applicants' physical appearance in court when the matter comes up for hearing be and is hereby dispensed with until further orders.
 - b. That order (a) above is subject to review from time to time should the court find it necessary in the interest of justice.

DATED AND SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 26TH DAY OF FEBRUARY 2021.

J.N. ONYIEGO

JUDGE

