



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**ADOPTION CAUSE NUMBER 12 OF 2018**

**IN THE MATTER OF**

**BABY SM a.k.a. SRK.....INFANT**

**AND**

**AMK.....APPLICANT**

**JUDGMENT**

The application is brought by way of Originating Summons dated 13<sup>th</sup> July, 2018. The applicant **AMK** through her advocates, Nancy Njoroge, Kairu & Company Advocates seek the following orders:

1. Spent.
2. Spent
3. Spent.
4. That the applicant be authorized to adopt baby SMA.K.A SRK and the child be called by the same henceforth.
5. That baby SM A.K.A SRK be presumed to be a Kenyan citizen by birth.
6. That the Registrar General do make the appropriate entries in the adopted children's register in respect of baby SM A.K.A SRK
7. That the court does issue such orders as may be necessary in the best interest of the child.
8. That the costs be in the cause.

The applicant **ANK** resides at [particulars withheld] Estate. She works for [particulars withheld]. She is single. She has never been married though she was in a relationship before. She has never had children due to health complications. She thus desires to parent through adoption so that the minor herein **SM a.k.a. SRK**, a male child, can have a permanent identity under her care. She also wants to extend care, love and compassion to a child under her care.

Baby **SM a.k.a. SRK** was presumably born on 8<sup>th</sup> March 2015. He was abandoned in a house all by himself with no one to care for him. Members of the public reported his plight to a voluntary children's officer one Benard Njenga Macharia in Maai Mahiu. Baby **SM a.k.a. SRK** was rescued and placed at Valley of Light Children's Home for the night. Later the matter was reported at Maai Mahiu Police Station vide Occurrence Book No.xx/x/xx/xxxx. The minor was temporarily placed Naivasha Safe House Children's Home where he received care and protection awaiting claims of a lost child or permanent placement.

On the 8<sup>th</sup> March, 2017 the Naivasha Children's Children's Court vide Protection and Case Number 62/2017 officially committed Baby **SM a.k.a. SRK** to the African Gospel Church Baby Center and he was admitted in the same institution on 9<sup>th</sup> March 2017. Information attached indicates that the child is in good health and that the home ensured that the child's immunization schedule was followed as per the Kenya Expanded Program Guidelines on Immunizations. He also tested HIV negative.

Maai Mahiu Police Station through a letter dated 1<sup>st</sup> December 2017 confirmed that no one has ever showed up at the station to claim for the abandoned child and their efforts to trace his mother as well as kindred have been futile.

**ANK** approached the Kenya Children's Home Adoption Society on 26<sup>th</sup> September, 2017 with an intention of being ratified for placement with a child with a male child with a view of eventually adopting. She was taken through the adoption process and its implications and signed the certificate of acknowledgment to confirm her understanding of the memorandum headed "Explanatory Memorandum for Adopters."

An interview session and a home study was conducted by the society's personnel at her Piave residence in Nakuru on 14<sup>th</sup> November, 2017. The applicant was approved to be a suitable potential adoptive parent by the society's case committee sitting of 17<sup>th</sup> January, 2018. Baby **SM a.k.a. SRK** was freed by the society's case committee on its sitting on 21<sup>st</sup> February 2018 and a Certificate of Declaring a Child Free for Adoption serial number 1443 was issued pursuant to **Section 156 (1) of the Children's Act 2001**. **ANK** was placed with baby **SM a.k.a. SRK** on 16<sup>th</sup> March, 2018.

On 18<sup>th</sup> October, 2018 the Court appointed **IMN** of P.O. Box xx-xxxxx Egerton and of P.O. Box xxx Molo as Guardian *ad Litem* of **SM a.k.a. SRK**. The Director of Children's Services in the Ministry of Labour and Social Protection was directed to conduct investigations as to the suitability of the applicant to adopt baby **SM a.k.a. SRK**. The consent of the biological parents of baby **SM a.k.a. SRK** was dispensed with.

Maureen Omondi, a personnel from the children's department conducted an interview on the applicant and made a home visit at her residence in Piave within Nakuru County to further interrogate her on her suitability to adopt baby **SM a.k.a. SRK**. Mr. N. Njagi for the County Children's Coordinator filed a report to court dated 15<sup>th</sup> January, 2019.

Mr. Njagi notes in his report that the prospective child out for adoption is a male child whereas the prospective adoptive parent is a female. He opines that notwithstanding the positive prevailing environment and bonding that has already taken place between the two so far, the Law does not allow a single female prospective parent to adopt a male child except in special circumstances determined by court.

I have had due regard to the application and the various reports. The report by Mr. Edwin N. Njagi for the County Children's Co-ordinators office has been of particular interest.

Upon evaluation of the material before court, I am satisfied that the applicant falls within the ambit of the special circumstances as per the guidelines of the National Adoption Committee dated 13/1/2010 whose elements are;

**“ (i) When the child is a relative.**

**(ii) When the child has special needs and applicant is willing and has special capacity to take care of the child.**

**(iii) Where the applicant has adopted or has another biological child or children over whom she is willing exercising parental responsibility.**

**(iv) Where the child being adopted has a sibling who is also adopted by the applicant.**

**(v) Where the applicant is the only person available to adopt the child and**

**(vi) Where the applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents dies or become permanently incapacitated.”**

I am fortified in that finding by the holding of this court (*Onyiego J*) in **Adoption Cause Number 17 of 2018 (in Re CKS (minor) 2018 eKLR**. The Judge stated;

**“In the instant case, the applicant has a biological child on whom she is willingly exercising parental responsibility. It is in the best interests of the baby herein that he gets a home, parental guidance, emotional, social and moral upbringing by a responsible parent. Further, the child is assured of basic necessities like food, shelter, clothing, medical care and education all of which the appellatant is capable of providing.**

**Considering that this is a local adoption and the baby having bonded very well as evidenced during their appearance and hearing in court, I am fully persuaded that gender issue cannot be an impediment towards the realization of the best interest of the baby.”**

The adoptive parent herein has another biological child over whom she is willingly exercising parental responsibility. In all the circumstances of the case and in the interests of the minor, I find no impediment towards the realization of the best interests of the baby.

I accordingly allow the originating summons dated 13/7/2018 and make the following orders;

**1. That the applicant be and is hereby authorized to adopt baby SM A.K.A SRK and the child be called by the same henceforth.**

2. That baby SM A.K.A SRK be and is hereby presumed to be a Kenyan citizen by birth.

3. That the Registrar General do make the appropriate entries in the adopted children's register in respect of baby SM A.K.A SRK

4. That the costs be in the cause.

Dated and Delivered at Nakuru this 28<sup>th</sup> day of February, 2019.

A. K. NDUNG'U

JUDGE