



**In re Adoptin of SWG (A Child) (Adoption Cause E023 of 2024)
[2025] KEHC 5257 (KLR) (1 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5257 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
ADOPTION CAUSE E023 OF 2024**

G MUTAI, J

APRIL 1, 2025

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF
ADOPTION OF SWG BY CTM AND MWG(THE JOINT APPLICANTS**

BETWEEN

CTM 1ST APPLICANT

MWG 2ND APPLICANT

AND

LITTLE ANGELS NETWORK RESPONDENT

JUDGMENT

1. Through an Originating Summons dated 10th December 2024 the joint applicants seek the following orders:-
 1. Pursuant to Article 14(4) of *the Constitution* of Kenya, 2010 and Part II, Section 7(1) of the *Children Act*, 2022, this honourable court be pleased to declare the child, Sasha Wangare Gathoni, a Kenya citizen by birth;
 2. Pursuant to the provisions of Section 187 of the *Children Act*, 2022 this honourable court be pleased to dispense with the requirement of the consent to the adoption as required by the provisions to section 186 of the *Children Act*, 2022;
 3. The applicants, Christopher Tito Mathigo and Monicah Waringa Gachucha, be authorized to adopt Sasha Wangare Gathoni;
 4. Upon the making of the adoption order, the child is to be known as Sasha Wangare Tito;



5. Upon the making of the adoption order, Lucy Muthoni Mburung'a and David Muema Mulinge be appointed the Legal Guardians of the child as provided for by the provisions of Section 195 of the *Children Act, 2022*;
 6. Upon the making of the adoption order, the Registrar General do make an entry in the Adopted Children Register, recording the adoption and the date of birth of the child as 1st February 2012 as provided for by section 201 of the *Children Act, 2022*; and
 7. The costs of this application be costs in the cause.
2. The joint applicants are both adult Kenyans of sound mind born on 4th March 1976 and 7th August 1981. They are African and reside in Mtwapa in Kilifi County in Kenya. They got married on 2nd May 2009. They do not have biological children of their own.
 3. The joint applicants are in stable employment. Christopher is a businessman, while Monicah works for Bulk Streams Ltd. The proposed adoptive child is Monicah's niece and the biological daughter of Monicah's sister.
 4. The joint applicants profess the Christian religion and propose to raise the child in that faith. They have the means, going by what they say, to take care of the child. They have no criminal record, nor are they disqualified under the relevant provisions of the *Children Act, 2022*. The Joint Applicants state that the proposed adoption has the support of the family members.
 5. They were investigated by the Little Angels Network, an adoption agency, which found that they are suitable adoptive parents. The report to that effect is dated 7th November 2024.
 6. The proposed adoptive child, Sasha Wangare Gathoni, is the daughter of Ms Alice Gathoni Gachucha. Alice is the sister of the 2nd applicant. The child has been with the two joint applicants since she was 2. Alice signed consent to the adoption (dated 3rd October 2024) and wrote a letter to that effect of even date. There is also an affidavit in which she consented to the adoption sworn on 3rd October 2024. The child was declared free for adoption by the Little Angels Network via that report dated 7th November 2024 and the certificate of Declaring a Child Free for Adoption dated 7th November 2024.
 7. Being a child of 13 years, Ms. Sasha consented to the adoption in her own handwriting.
 8. The joint applicants filed a chamber summons dated 10th December 2024 together with their application, vide which they proposed to have Prudence Kambe Nyambu appointed as a guardian ad litem. The said application was heard on 23rd January 2025.
 9. Upon hearing the proposed guardian ad litem, I allowed the application as she was suitable. I directed her and the Directorate of Children Services to conduct the necessary social enquiry and to prepare and file the requisite report within 30 days of the 23rd of January 2025. I fixed the matter for a hearing interpartes on the 27th of February 2025.
 10. The Originating Summons was heard on 27th February and 17th March 2025. I shall provide a summary of the evidence below.
 11. Esther Kalee of Little Angels Network was the first witness. She is a program officer with the organization. She testified that they assessed the joint applicants and freed the child for adoption. Their report is dated 7th November 2024. The certificate declaring the child free for adoption has serial number 002502. The approval was done by the case committee of the Little Angels Network on the 7th day of November 2024. Ms Kalee recommended the adoption as it would be in the best interest of the child.



12. Ms Prudence Kambe Nyambu, the guardian ad litem, was the second witness. She is a resident of Zawadi Apartments in Bamburi and works in the hospitality industry. She testified that she conducted a home visit and established that Sasha stayed in a comfortable home environment with loving parents. She stated that Sasha was happy to have them as adoptive parents. Ms Nyambu, too, recommended the adoption.
13. The third Witness was Ms Monicah Waringa Gachucha. Ms Monicah testified that she and Mr Christopher had been married for 15 years. It was her evidence that they had lived with Miss Sasha for over 10 years. She testified that they had been looking after her well-being. They cared for her as her sister lacked the means to care for her. Ms. Monicah testified that she was aware that adoption is permanent and irreversible and that Sasha would have the right to inherit from them. She stated that she would guide and discipline Sasha as she grew up. To safeguard her, they had proposed legal guardians who would step in if anything happened to them.
14. Christopher Tito Mathigo, the first Applicant was the fourth witness. He testified that he was a businessman engaged in exporting avocados. He concurred with his wife that Sasha had been with them for 10 years. He testified that it would be right for her to be formally incorporated into the family. He, too, was aware that adoption is permanent. He further testified that the adoption had the support of the family members and that they had proposed legal guardians so that in case anything happened to them, they would be covered.
15. Since Sasha Wangare Gathoni isn't a child of tender years, the Court interviewed her. Miss Sasha said she was happy to be adopted by the joint applicants.
16. I have considered the application herein, materials in support, and evidence by various witnesses. The issues that emerge for determination are whether the children are available for adoption, whether the joint applicants are fit to adopt the children, and most importantly, whether the adoption is in the best interest of the said children.
17. From the evidence, it is clear that Sasha Wangare Gathoni is the biological child of Alice Gathoni Gachucha. Alice is the sister of the second applicant and, thus, the brother-in-law of the first applicant. The present whereabouts of Sasha's father is unknown. He has not played a role in Alice's upbringing and has been totally absent. The child has been under the care of the joint applicants. From the evidence adduced, the proposed adoption enjoys the support of the extended family.
18. Since the male parent is unknown and untraceable, and as this is a kinship adoption, the consent of the biological father is hereby dispensed with.
19. The proposed adoptive child is the issue of Alice Gathoni Gachucha. The biological mother is a Kenyan citizen and resides in Kenya. Article 14(1) of *the Constitution* of Kenya, 2010 provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen. Sasha was born in Kenya, and her biological mother is Kenyan; thus, in view of this provision, the child herein is presumed to be a Kenyan citizen by birth.
20. The said child is above 6 weeks and below 18 years, the provision of which falls within the age bracket of any adoptive baby pursuant to Section 184(1) (b) of The Children's Act 2022. Further, Section 185(1) recognizes any child who is a resident of Kenya, whether born in Kenya or not, as eligible for adoption. I have no doubt that the child is fit for adoption.
21. Concerning the joint applicants' suitability, they are Kenyan citizens, thus qualifying this as local adoption. The 1st applicant is 49 years old, while the 2nd applicant is 43 years old, which places them in the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance



with Section 186(2) (a) of the Children’s Act. The joint applicants have been described as financially stable, as indicated in the Director of Children Services Report. They are caring, loving Christians and have no criminal record. They have fully bonded with their adoptive parents. They also understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and admit they will treat the child like their biological child. It’s my view that the applicants have met the necessary requirements to adopt the said child.

22. On the question of whether the adoption is in the best interests of the child, guidance is drawn from Article 53(2) of The Constitution and sections 8(1) and (2) of The Children’s Act 2022, which underscores the best interests of children as the primary consideration before making any decision concerning children.

23. I Am also guided by the decision of Nyakundi, J in the case of In re B (Baby) [2018] KEHC 6114 (KLR), where he stated that:-

“The purpose of Kenya’s Constitution and Children’s Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern, therefore, in every adoption cause provision is in the best interest of that very child.

That law presumes that by granting foster care the adoptive parties will provide and promote a stable, supportive and nurturing environment for the child. From the reports filed by the Director Children Services and Kenya Children’s Homes adoption agency both applicants are in good health, have fulfilled the condition’s precedent set out under section 158 of the Children’s Act.

It is also not in dispute that they both have a steady income and a home where they live together. During the pendency of these proceedings both applicants have had the opportunity to bond with the child since her placement in their custody.

It is that family unit that the constitution contemplates under Article 45 which also has to take responsibilities in fulfilling the obligations enjoined in Article 53 of the same constitution.”

24. Sasha’s biological father is unknown. Her biological mother has one other child and lacks the financial ability to take care of two children. The joint applicants will help Sasha progress in education and life and give her better life chances. Like any other child, Sasha needs parental care and guidance. She also needs basic necessities like food, shelter, education, and clothing. She has fully integrated with the joint applicants. It is obviously in the best interests of the said child that this adoption application is allowed.

25. In my view, the Originating Summons filed in this cause has merit. I therefore issue the following orders:-

1. I declare the child Sasha Wangare Gathoni a Kenyan Citizen by birth;
2. I dispense with the consent of the biological father of the child since his present whereabouts are unknown and also as he hasn’t played a part in her upbringing;
3. The joint applicants, Christopher Tito Mathigo and Monica Waringa Gachucha, are hereby authorized to adopt Sasha Wangare Gathoni;
4. Sasha Wangare Gathoni shall henceforth be known as Sasha Wangare Tito;
5. I appoint Lucy Muthoni Mburung’a and David Muema Mulinge as the Legal Guardians of Sasha Wangare Tito and entrust them with the responsibility of taking care of the child in the



event the joint applicants become deceased or are otherwise permanently unable to take care of her before she attains the age of majority;

6. The Registrar General is hereby ordered to make an entry recording the adoption order made herein and the date of birth of Sasha Wangare Tito as being 1st February 2012 as provided for by section 201 of the *Children Act*, 2012; and

7. The guardian ad litem, Prudence Kambe Nyambu, is hereby discharged.

26. I make no orders regarding cost as this is a non-contentious adoption matter.

27. Orders accordingly

DATED AND SIGNED AT MOMBASA THIS 1ST DAY OF APRIL 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Ms Ngugi, for the Joint Applicants; and

Arthur - Assistant Court.

