



**In re SM (A Child) (Adoption Cause E002 of 2025)
[2025] KEHC 13210 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13210 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
ADOPTION CAUSE E002 OF 2025
RM MWONGO, J
SEPTEMBER 24, 2025
IN THE MATTER OF THE CHILDREN ACT CAP. 141 OF THE LAWS OF KENYA
IN THE MATTER OF THE ADOPTION OF SM (A CHILD)**

IN THE MATTER OF

GIS 1ST APPLICANT

AKN 2ND APPLICANT

JUDGMENT

The Application

1. The applicants filed an originating summons dated 06th February 2025 seeking the following orders from this court:
 1. That the applicants be authorized to adopt SM, a child;
 2. That the consent of the biological parents be dispensed with as the child was abandoned;
 3. That upon the making of the adoption order the said child be known as FGN;
 4. That the Registrar General do make the appropriate entry of FGN in the Adopted children’s register;
 5. That the child FGN be presumed to be a Kenyan Citizen born in Kenya and be issued with a Kenyan passport; and
 6. That SKN be appointed legal guardian of the child FGN.
2. The originating summons was accompanied by a statement by the applicants in support of the application.



The Applicants' Background

3. The 1st applicant (male) was born in 1973 while the 2nd applicant (female) was born in 1987. They got married to each other in 2001 and they have never had biological children due to medical complications. The 1st applicant works as a mason while the 2nd applicant owns a tailoring shop. They make a reasonable income to finance their lifestyle and take care of the child as necessary. They have fostered relative's children but now they find it best to adopt a child of their own.
4. The applicants do not own any property yet but they have leased land on which they farm. They currently live in a 1 bedroomed house in Embu County. The house is well furnished and serviced with the necessary utilities. The house is one of several units securely surrounded by a perimeter wall.
5. The child was placed in their care in 2017 where he has remained to date. They adjusted their lives accordingly in order to accommodate the needs of the child. They enrolled the child in a public school where he is doing well. They stated that their families are supportive of their application to adopt the child and they have bonded well with him.

Background of the child

6. The child was found abandoned in December 2013 by a good Samaritan. She reported the matter at Laare Police Station, Meru County, under OB No.55111/12/13 and the child was first taken to Tuuru Catholic Mission Hospital for short term custody. When no one claimed the child, the Children Department instituted Care and Protection Case No.9 of 2014 at Maua Children Court for Committal to a charitable institution. By an order dated 31st March, 2014, the Court issued a Committal Order committing the child to the Child Welfare Society of Kenya (CWSK), Isiolo, Temporary Place of Safe Custody until further orders.
7. CWSK undertook tracing of the child's family through the media and physical searches but their efforts were fruitless. The child remained unclaimed and so he was placed in the custody of the applicants in June 2017, for fostering.

Guardian Ad Litem

8. This court, vide an order issued on 04th March 2025, allowed the applicants' chamber summons dated 06th February 2025 through which they applied for PMM to be appointed as guardian ad litem in accordance with section 188(1) of the *Children Act*. The court also ordered that the Secretary of Children's Services do file a report. Similarly, the appointed guardian ad litem was required to file a report on the child.

Report by the guardian ad litem

9. In accordance with section 188(2)(b) of the *Children Act*, the guardian ad litem filed a report dated 03rd April 2025 in court. He vouched for and highly recommended the applicants as adoptive parents. He reported on the background of the couple and highlighted their desire to be parents to the child. He stated that the applicants and the child have bonded well and recommended the adoption as being in the best interests of the child.

Report by the Secretary, Children Services

10. Section 184(4) of the *Children Act* requires that the Office of the Secretary of Children Services shall monitor and submit reports to the court on the wellbeing of a child who is the subject of adoption proceedings. In compliance with this provision, the department of Children's Services, Embu, filed a



report dated 1st April 2025. The report detailed the history and background of the applicants in relation to this case.

11. Upon a home visit, the Children Officer detailed that the applicants live in a 1 bedroomed house and the child sleeps in a space separated from the main living room with a curtain. The child seemed happy and comfortable living there. He attends a nearby public school. The applicants make about Kshs.60,000/= monthly from their various jobs and they are confident that they can comfortably provide for the child. It appeared that the child had bonded well with the applicants. The report recommends that it is in the best interest of the child that he be adopted by the applicants.

Suitability of the applicants for adoption

12. Section 186(1) and (2) of the *Children Act* provides for who may adopt a child, as follows:

- “(1) The Court may make an adoption order on application by—
- (a) a sole applicant; or
 - (b) two spouses jointly.
- (2) The Court shall not make an adoption order in any case unless—
- (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
 - (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.”

13. The applicants are both above the age of 25 years and below 65 years, making them eligible prospective parents for the child. They are both Kenyans and law-abiding citizens. They have also demonstrated their social and financial ability to take care of the child since their resources are sufficient.

Best interest of the child

14. A child’s best interests are of paramount importance in every matter concerning the child. This is the dictate of Article 53(2) of *the Constitution*. Section 4(2) of the *Children Act* also elevates the best interest of the child and provides that:

“Despite subsection (1), a provision in another legislation on children matters may prevail if it offers a greater benefit in law to a child.”

15. The child is above six (6) weeks old and below 18 years. This is the statutory requisite age bracket for a child to qualify for adoption under Section 184 (1) of the Children’s Act.
16. Moreover, CWSK provided a report together with the Certificate Declaring the child Free for Adoption. In their report, they stated that the minor has remained unclaimed since the time when he was found abandoned. Therefore, it is in his best interest to declare him free for adoption under section 185(4)(c) of the Children’s Act.

Disposition

17. The documentation presented before the court regarding the adoption of SM, a minor, qualifies his adoption by the applicants. The applicants also meet the legal requirements required to enable them to adopt the child.



18. It is in the best interest of the child that he be adopted by the applicants. Therefore, the Court being so satisfied, hereby grants the following prayers:

1. The applicants are hereby authorized to adopt SM;
2. The consent of the biological parents is hereby dispensed with since the child was abandoned;
3. Henceforth, S.M shall be known as child FGN;
4. The Registrar General is ordered to make the appropriate entry of FGN in the Adopted Children's Register;
5. The Registrar General shall issue to the applicants a certified copy of the entry pursuant to Order 4 herein the Adopted Children Register, upon payment of the prescribed fee;
6. The child FGN is hereby presumed to be a Kenyan citizen born in Kenya;
7. Pursuant to order (6) hereinabove, the Director of Immigration Services is hereby ordered to issue a Kenyan Passport to FGN; and
8. PMM is hereby discharged as guardian ad litem forthwith, and SKN is hereby appointed Legal guardian of the child FGN.

19. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 24TH DAY OF SEPTEMBER, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Gerison Ileri Stephen - Applicant

Alice Kabari Njagi - Applicant

Francis Munyao - Court Assistant

