



**In re SM alias LM (Minor) (Adoption Cause E074 of 2024)
[2024] KEHC 9274 (KLR) (Family) (15 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9274 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E074 OF 2024
H NAMISI, J
JULY 15, 2024
IN THE MATTER OF THE CHILDREN ACT, CAP 141 OF THE LAWS OF KENYA
AND
IN THE MATTER OF ADOPTION OF BABY SM ALIAS LM (MINOR)
IN THE MATTER OF
SPE APPLICANT**

JUDGMENT

1. Before this Court is the Originating Summons dated 25th March 2024, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
 - i. That the Applicant, SPE, be authorised to adopt Baby SM aka LM a minor who is to be known as RAA and the Registrar General be directed to enter this adoption into the Register of Adoptions;
 - ii. That SEE and ELE be appointed as the legal guardians of the child;
 - iii. That the child be presumed to have been born in Kenya
2. The matter was canvassed by way of viva voce evidence on the virtual platform on 20th and 27th June 2024.

The Child

3. According to the Report by the Directorate of Children Services dated 29th April 2024, the child (female) was born on 3rd January 2019. The child was abandoned at Kenyatta National Hospital on 26th January 2019. The matter was reported to the Police vide OB No xx/26/1/2019. The child was committed to Imani Children's Home by the Children's Court at Nairobi.



4. The child is currently 5 years old and attends Lavena Academy. She was declared free for adoption by the KKPI Adoption Services, a registered Adoption Agency, vide the annexed Certificate serial number xxx. I am, therefore, satisfied that this legal pre-requisite for an adoption has been met.

The Applicant

5. The Applicant, aged 53 years, is a teacher and resides in Nairobi. She does not have any other children and her motivation to adopt the child is captured at paragraph 4 of her Statement in Support of the Application as follows:

“That my desire to adopt the minor herein is driven by the fact that I have always desired to have children of my own but die to reasons beyond my control, I am unable to do so and as a result I have opted for adoption.”

6. The Applicant confirmed that she fully understands the implications of an adoption order and undertook to accord the child the rights and privileges due to a biological child.

The Application for Adoption

7. I have considered the Summons, the evidence on record as well as the various reports filed.
8. The duty of this Court is to analyse the material before it to determine whether the Applicant is a suitable adoptive parent. The Applicant is a citizen of Kenya as evidenced by the copy of the National Identity Card annexed to the Summons.
9. The Applicant is a committed Christian and intends to raise the child in the Christian faith to ensure the child's full development. She worships at Mary Queen of Apostles Parish in Dagoretti, where she is a member of the choir. The Applicant has annexed her medical reports, indicating that she is in good health.
10. The Applicant has annexed a copy of her payslip, copy of Share Certificate as well as copies of her Bank statements as proof of financial stability. She has also annexed a copy of clearance certificate from the Kenya Police Service as proof of her good standing.
11. The Applicant has appointed SEE and ELE as legal guardians. SEE has known the Applicant for over 30 years and has had opportunity to interact with the child. ELE is a niece to the Applicant. Both legal guardians have signed a Consent dated 25th March 2024 indicating their willingness to step in and care for the child in the event that the Applicant is incapacitated before the child attains the age of majority.
12. The Guardian ad Litem, NNM, conducted a home visit and filed a report dated 29 April 2024. It was her recommendation the Applicant should be allowed to adopt the child since she has proved to be a good parent.
13. From the material availed, I am satisfied that the Applicant is a suitable adoptive parent.

Analysis and Determination

14. Article 14 (4) of *The Constitution* provides as follows:

A child found in Kenya who is, or appears to be, less than 8 years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.

15. The child was abandoned within the Republic of Kenya barely a month after birth. I, therefore, declare that the child is a citizen of Kenya by birth.



16. Following the child's abandonment, all efforts by the police to trace the child's parents/relatives have borne no fruit. The final letter dated 6th August 2019 from Kenyatta Police Post indicates that efforts to trace the parents have been futile. In the circumstances, there exists no known person from whom consent for this adoption can be sought and/or obtained. I, therefore, waive this requirement in line with section 185 (4)(b) of the [Children Act](#), Cap 141 of the Laws of Kenya.
17. In deciding any matter involving a child, the court is obligated to give priority to the best interest of the child. Section 8 of the [Children Act](#) provides:
 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies –
 - a. The best interests of the child shall be the primary consideration;
 - b. The best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule;
 2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-
 - a. Safeguard and promote the rights and welfare of the child;
 - b. Conserve and promote the welfare of the child; and
 - c. Secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
18. This child who was abandoned barely a month after birth faced an uncertain future in the children's homes and other similar institutions. This adoption, therefore, allows the child the opportunity to be raised in a stable and loving home environment.
19. I have considered the Reports filed by the Adoption Agency, the Guardian Ad Litem, the Director of Children Services, all of which were positive and recommended the adoption. I was able to see the child online. She is happy, healthy and cheerful. She enjoys going to school and playing with her friends. She was able to answer basic questions about herself. She appeared to be comfortable in the presence of the Applicant.
20. It is therefore my view that the adoption serves the best interests of the child.
21. Accordingly, I allow the Summons and make the following orders:
 - i. The Applicant, SPE, is hereby allowed to adopt Baby SM aka LM a minor who is to be known as RAA.
 - ii. The child is declared to be a Kenyan citizen by birth, entitled to all the rights and privileges under [the Constitution](#) of Kenya and all applicable laws;
 - iii. The Registrar General is directed to make the appropriate entries in the Adopted Children's Register;
 - i. That SEE and ELE be appointed as the legal guardians of the child;
 - iv. The Guardian ad Litem is hereby discharged;



DATED AND DELIVERED AT NAIROBI THIS 15 DAY OF JULY 2024

HELENE R. NAMISI

JUDGE

Delivered on a virtual platform in the presence of

Juma h/b Ms. Wairimu Wangechifor the Applicant

