



**In re S aka SPMM (Baby) (Adoption Cause 53 of 2015)  
[2023] KEHC 2206 (KLR) (Family) (10 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 2206 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
ADOPTION CAUSE 53 OF 2015  
MA ODERO, J  
FEBRUARY 10, 2023  
IN THE MATTER OF ADOPTION OF BABY S A.K.A SPMM  
AND  
IN THE MATTER OF AN APPLICATION FOR ADOPTION  
BY**

**IN THE MATTER OF**

**JMM ..... 1<sup>ST</sup> APPLICANT  
AWM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this court is Originating Summons dated November 7, 2014 by which the applicants sought for the following orders:-
  1. Spent
  2. Spent
  3. That the applicants JMM and AWM of P O Box xxxx Nairobi Kenya be hereby authorized to adopt the infant herein one S/SPMM”
2. The application was supported by the statement of even date sworn by the applicants. The matter was canvassed by way of viva voce evidence on the virtual platform.
3. Although this summons was filed by the two applicants together the 1<sup>st</sup> applicant JMM unfortunately passed away before the matter could be heard. A copy of his Death Certificate Serial No. xxxx is annexed. The second Applicant AWM opted to complete the adoption process on her own.



4. The applicant is a widow who at the time of filing this summons had married her late husband on January 21, 1997. A copy of their Marriage Certificate Serial Number xxxx is annexed to the summons. The couple had no children together. They therefore opted to adopt the subject child in order to complete their family and to give a needy child a home.
5. The 2<sup>nd</sup> applicant told the court that fully understands the legal implications of an adoption order. She undertakes to accord to the subject child all rights due to a biological child including the right to inherit. She informed the court that her extended family are supportive of her intention to adopt the child.

### **Analysis and Determination**

6. I have carefully considered this application for adoption, the evidence adduced in support thereof as well as the various reports in court. The prerequisites which must be met before an adoption order can be made are set out in section 184 (1) (a) and (b) of the Children's Act 2022 as follows:-
  - (1) A person shall not commence any arrangements for the adoption of a child unless—
    - (a) the Council, in accordance with the rules, has declared the child free for adoption; and
    - (b) the child has attained the age of six weeks.”
7. The subject child is believed to have been born on September 2010. Therefore the child is now aged twelve (12) years old and is above the six (6) weeks age limit provided for in the law.
8. KKPI Adoption Society which is a registered adoption agency, have annexed to their report dated March 16, 2014, the original copy of their Certificate Serial Number xxx dated 27<sup>th</sup> February 2013 declaring the child free for adoption. Accordingly, I am satisfied that the legal prerequisites for an adoption order have been met.
9. The Applicant herein is a Kenyan citizen as evidenced by copy of her National Identity card, which is annexed to the summons. The Applicant runs a business outside her home from which she earns about Kshs 35,000 per month. She also carries out farming activities which bring in extra income. I find that the Applicant is financially capable of providing for the child.
10. The Applicant is a Christian and intends to raise the child in the Christian faith. She was examined by a doctor and was found to be both physically and mentally fit. The Applicant has annexed to the summons a copy of a Clearance Certificate issued to her by the Directorate of Criminal Investigations.
11. The Applicant indicated to court that the extended family support her intention to adopt the child. She has appointed HWG as the legal Guardian for the child. The said legal Guardian has signed a consent dated November 7, 2014 confirming her willingness to act as a legal Guardian.
12. As stated earlier the applicant commenced this application for adoption with her late husband. Notwithstanding the demise of the 1<sup>st</sup> applicant before the adoption process was complete the Applicant told the court that she wishes to complete the process and to adopt the child as a single applicant. There is nothing in law barring her from doing this. All in all I am satisfied that the Applicant is a suitable adoptive parent.
13. The subject child is believed to have been born in September 2010. The child was found abandoned at the Eastleigh Area of Nairobi County. A Good Samaritan rescued the child and reported the matter at Pumwani Police Station vide OB Number 14 of 18<sup>th</sup> September 2010. On 26<sup>th</sup> November the Nairobi Childrens Court committed the child to Hope House Babies Home for care and protection.



Thereafter on March 30, 2013 the child was released into the custody of the Applicant under the Foster Care Agreement.

14. Article 14 (4) of the Constitution of Kenya 2010 provides that:-

“A child found in Kenya who is or appears to be less than eight years of age and whose nationality and parents are not known is presumed to be a citizen of Kenya”

15. This is a child who was abandoned at the age of one (1) month within the Republic of Kenya. I therefore declare the child to be a citizen of Kenya by birth.

16. From the time of his abandonment, no person has come forward to claim the child. Police efforts to trace the biological mother and/or relatives of the child have borne no fruit. The final police letter dated April 14, 2013 is proof of this fact. Given the fact of his abandonment, there exists no person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 187(1) of the Children's Act 2022.

17. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the Children Act 2022 provides:-

“(8). (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;” (own emphasis)

18. This is a child who was abandoned shortly after his birth. The child faced an uncertain future living in Childrens Homes. This adoption accords the child the opportunity to be raised in a stable and loving home environment. The child has lived with the Applicant in her home since March 2013 a period of close to ten (10) years. The child has undoubtedly bonded with the applicant.

19. I was able to see and interview the child online. He was a healthy boy who was articulate. Although the child told the court that he was twelve (12) years old, he did not understand the meaning of adoption, however the child stated that he was very happy living with the Applicant who he referred to as his mother.

20. The child did indicate his consent to the court and his desire to continue living with the applicant. He has signed the consent dated December 20, 2022.

21. A home visit was conducted by the Childrens Officer. The applicant resides in her own house in [particulars Withheld] Estate. The house is a two bedroomed house and the child has his own room.

22. I have perused the reports filed by the Adoption Agency, the Guardian Ad Litem and the Director Children Services. All three reports are positive and recommend the adoption.

23. The Director Childrens Services filed a first report dated February 26, 2018 and following the demise of the 1<sup>st</sup> Applicant filed a supplementary report dated November 4, 2011. In both reports the Director recommended the adoption of the child by the applicant.

29. I find that this adoption serves the best interests of the child. Accordingly, I allow this application and make the following orders:-

1. The applicant AWM is authorized to adopt the child known as BABY S.
2. Upon adoption, the child shall be known as SPMM.



3. The child is declared to be a Kenyan Citizen by birth and entitled to all the rights and privileges pursuant thereto.
4. The Registrar General is directed to make relevant entry in the Adopted Children's Register.
5. HWG is appointed is legal guardian for the child.

**DATED IN NAIROBI THIS 10TH DAY OF FEBRUARY 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

