



**In re SM (Baby) (Adoption Cause E090 of 2022)  
[2023] KEHC 17422 (KLR) (Family) (9 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17422 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**ADOPTION CAUSE E090 OF 2022**

**RL KORIR, J**

**MAY 9, 2023**

**IN THE MATTER OF THE CHILDREN'S ACT**

**AND**

**IN THE MATTER OF BABY SM**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY**

**IN THE MATTER OF**

**ANM ..... APPLICANT**

**JUDGMENT**

1. Before this court is the undated Originating Summons by which the Applicant seeks the following orders: -
  - I. That the Applicant be authorized to adopt the child baby SM .
  - II. That upon making the adoption order, the said child be known as MWN .
  - III. That the Registrar General do make the appropriate entry of MWN in the Adopted Children's Register.
  - IV. That the child MWN be presumed to be a Kenyan Citizen and be issued with a Kenyan passport.
  - V. That MN be appointed as the Legal Guardian of MWN .
2. The Application is supported by the signed but undated Statement and undated but sworn affidavit of the Applicant.



3. The Applicant is a single woman aged 40 years who has never been married. She has no biological children. She seeks to be authorized to adopt the baby SM .
4. I heard the Application on April 13, 2023. In oral testimony before me, the Applicant asked the court to allow her to adopt baby SM who is 8 years old. That she had lived with the child since she was 7 years old. The Applicant further stated that she was aged 40 years and was sure she could not bear any biological children. She told the court that she was a businesswoman and owned a shop.
5. The Guardian Ad Litem, SM stated that he had visited the Applicant and seen that she was raising the child well. He recommended the adoption. MM the proposed legal guardian stated that he understood the responsibilities of a Legal guardian which he was willing to undertake as he was the brother to the Applicant.

### **Analysis And Determination**

6. The governing law in this Application is the Constitution and the Children's Act 2022. Article 53 (2) of the Constitution provides: -

A Child's best interest are of paramount importance in every matter concerning the child.

7. 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)

8. Section 184(1) of the Children's Act 2022 provides 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.”

9. The duty of this court therefore is to secure the best interest of the child by determining whether the Applicant was a suitable adoptive parent. Needless to state the Court must ensure compliance with the law and in particular that the child was free for adoption.
10. The child baby SM was offered up for adoption by her biological parents, DM and NK. The said child was born on June 18, 2015. On June 19, 2015, baby SM was placed at Springs of Life Children's home through the Children's Court in Kakamega. The Child Welfare Society of Kenya declared the child free for adoption vide their report dated September 1, 2020.
11. I have considered the Report by Ruth Boke Gikaro the Children's Officer dated February 8, 2022 and counter signed by Nancy Waswa, the Assistant Director Children Services. The Report confirms that the child was free for adoption and that baby SM was very free and open with the Applicant whom she referred to as “mum”. That it was evident that the child had found a new home in the Applicant's



house. The Report also stated that the Applicant made between Kshs 15,000 to Kshs 20,000 from her enterprenual hustles and was therefore capable of caring for the child.

12. The Children’s Officer’s Report indicated that the Applicant lived along Jogoo road in a one bedroomed house. That the house was conducive for living. The Report recommended the adoption of Baby SM by the Applicant.
13. In conclusion, I am satisfied that the best interest of the minor will be served in allowing this Application. I therefore grant the orders that: -
  - i. The Applicant, ANM is authorized to adopt the child known as Baby SM .
  - ii. Upon adoption, the child shall be known as MWN whose date of birth shall be indicated as June 18, 2015.
  - iii. The Registrar – General is directed to make the relevant entry in the Adopted Children’s Register.
  - iv. The child is presumed to be a Kenyan citizen by birth and is entitled to all the rights and benefits pursuant thereto.
  - v. MN is appointed the Legal Guardian of the child.
  - vi. The Guardian *Ad Litem* is hereby discharged.

**Orders accordingly**

**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 9<sup>TH</sup> DAY OF MAY, 2023**

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**R. LAGAT-KORIR**

**JUDGE**

**Judgement virtually delivered in the presence of the Applicant. Siele (Court Assistant)**

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