



**In re Baby MA aka S (Adoption Cause E210 of 2022)
[2023] KEHC 17916 (KLR) (Family) (5 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17916 (KLR)

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

FAMILY

ADOPTION CAUSE E210 OF 2022

MA ODERO, J

MAY 5, 2023

IN THE MATTER OF CHILDREN’S ACT NO 8 OF 2001

AND

IN THE MATTER OF ADOPTION OF BABY MS AKA S

IN THE MATTER OF

FOO 1ST APPLICANT

TAO 2ND APPLICANT

JUDGMENT

1. Before this court is the originating summons dated November 9, 2022 by which the applicants F O O and T A O seek the following orders.
 1. That the applicants be authorized to adopt Baby M S aka S, a minor who is to be known as A M O and the Registrar General be directed to enter this adoption into the Register of Adoptions.
 2. That H N O O and C R A O be appointed as the Legal Guardians.
 3. That the child be presumed to have been born in Kenya”
2. The summons was supported by the statement of even date sworn by the applicants. The matter was canvassed by way of *vive voce* evidence on the virtual platform.
3. The applicants are a married couple who have one biological daughter aged nine (9) years old. The couple now wish to adopt the subject child in order to expand their family and out of a desire to provide a needy child with a home.



4. The applicants both confirm that they understand the legal implications of an adoption order. They both undertake to provide the subject child with all the rights due to a biological child including rights to inherit.

Analysis and Determination

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children's Act 2022*: -
 - "(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 June 1, 2019. She is now aged about four (4) years old and is above the six (6) weeks age limit provided for by law.
8. Buckner Kenya Adoption Services, have annexed to their report the original copy of their certificate serial number 0xxx dated March 18, 2022 declaring the child free for adoption. In the circumstances, I find that the legal prerequisites for an order of adoption have been met.
9. The duty of this court is to analyze the evidences on record to determine whether the applicants are suitable adoptive parents. The applicants are both Kenyan Citizens as proved by the annexed copies of their National Identity cards (pages 1-2).
10. The applicants are a couple who solemnized their union on the May 14, 2012 at the [particulars withheld] Church. A copy of their Marriage Certificate Serial Number 8xxxx5 is annexed at page 3 of the Summons.
11. The Applicants union was blessed with two daughters born in the years 2014 and 2018. Unfortunately, their younger daughter passed away after a short illness. The couple now wish to adopt the subject child in order to expand their family. They are also motivated by a desire to provide a needy child with a home.
12. The applicants are both gainfully employed. The 1st applicant runs a business known as [particulars withheld] Limited whilst the 2nd applicant also runs a business known as [particulars withheld] located at Adams Arcade. Annexed pages 59-60 to the summons are copies of the certificates of incorporation for the 2 companies. The applicants have also annexed copies of bank statements (pages 28-45) for their joint bank account. Together the applicants realize a joint monthly income of over Kshs 1.0 Million. I am satisfied that the applicants are financially stable and are capable of providing for the need of the child.
13. The applicants are both committed Christians and intend to raise the child in the Christian faith. They have annexed a copy of a letter of recommendation dated March 5, 2019 written by Reverend Mark Maingi of the Nairobi Chapel Karen Branch (see page27).



14. The applicants were both examined by a Doctor and were found to be mentally and physically fit. They have annexed copies of a clearance certificate issued by the Directorate of Criminal Investigation (pages 62 - 63) proving that neither has a Criminal record.
15. The applicants stated that their respective families are aware of and support their intention to adopt the subject child. They have appointed the 2nd applicant's sister and brother in-law as the legal guardian for the child. The proposed legal guardians H N O O and C A O have signed a consent dated November 9, 2022, confirming their willingness to act as legal guardians for the child.
16. All in all, I am satisfied that the applicants are suitable adoptive parents.
17. The subject child is a girl child who is believed to have been born on or about June 1, 2019. The baby was found naked and abandoned shortly after birth at Jokam area of lower Chokaa Area of Nairobi County. Good Samaritans rescued the baby and rushed her to a nearby Health Centre for medical attention. The abandonment was reported at Hurligham Police Station vide OB Number 12 of June 1, 2019.
18. Thereafter on April 16, 2021, the Nairobi Children's Court committed the child to Imani Children's Home for care and protection. On March 23, 2022, the child was released into the custody of the applicants under a foster care agreement
19. Article 14 (4) of the [Constitution of Kenya 2010](#) provides that: -
 - "(4) 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 by Birth."
20. This is a child who was abandoned shortly after her birth in the Chokaa area of Nairobi County within the Republic of Kenya. The child is therefore presumed to be a citizen of Kenya by birth.
21. Given the fact of the child's abandonment, there exists no known 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) (a) of the [Children Act 2022](#).
22. 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)
23. This is a child who was abandoned shortly after her birth. She faced an uncertain future living in Children's Home and other similar institutions. The adoption allows the child the opportunity to be raised in a stable and loving home environment.
24. The child has lived with the applicants since March, 2022. She has undoubtedly bonded with the family – I was able to see the child online. She was healthy bubbly toddler who happily answered basic questions about herself. The child was obviously very comfortable seated on the lap of the 2nd applicant.
25. A home visit was conducted on March 6, 2023. The applicants live in their own four bedroomed house in the Karen area of Nairobi. The home was securely fenced with 24-hour security. The house is close



to social amenities like schools, hospitals, churches, shopping malls etc. It was found to be a conducive environment in which to raise a child.

26. I have carefully perused the reports filed by the Adoption Agency the Guardian *ad litem* and the Director Children's Services. All three reports were positive and all recommend the adoption.
27. In conclusion I find that this adoption serves the best interest of the subject child. I therefore, allow this application and make the following orders:-
 1. The applicants F O O and T A O are authorized to adopt the child known as Baby M S aka S.
 2. Upon adoption the child will be known as A M O.
 3. The child is presumed to be a citizen of Kenyan by birth and is entitled to all rights and privileges thereto.
 4. The Registrar General is directed to make the relevant entry in the Adopted Children's Register.
 5. H N O O and C R A O are appointed as the Legal Guardians of the child.

DATED IN NAIROBI THIS 5TH DAY OF MAY 2023.

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MAUREEN A. ODERO

JUDGE

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