



In re Abandoned Baby R alias Unknown Abandoned Child (Child) (Adoption Cause E211 of 2023) [2023] KEHC 20055 (KLR) (Family) (2 June 2023) (Judgment)

Neutral citation: [2023] KEHC 20055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E211 OF 2023
PM NYAUNDI, J
JUNE 2, 2023
ABANDONED BABY R ALIAS UNKNOWN ABANDONED CHILD (THE CHILD)**

IN THE MATTER OF

SOO 1ST APPLICANT

JSAS 2ND APPLICANT

JUDGMENT

1. The Applicants SOO and JSAS, vide Originating Summons dated 24th November 2022 have made an application for the adoption of BABY RS alias Unknown Abandoned Child Male the minor herein. The Applicants have been married since 12th December 2012 and have attached a copy of marriage certificate serial number [particulars withheld]. They wish to adopt the baby with the intention to welcome the child into their home to be loved and cared for. They do not have children of their own. The 1st applicant is a Sales and Business Development Executive at [particulars withheld]; while the 2nd Applicant works as a Teacher at [Particulars withheld] International School. They have a home at [particulars withheld]. They aver that they have the means to provide for the Child's basic needs.
2. The Child was found abandoned on 15th March 2020 at the Outpatient Department of Thika Level 5 Hospital Kiambu County. An outpatient nurse covering the day on 15th March discovered the child while doing duty. The child was then admitted to the pediatrics Ward. There were no details about the parents or guardians. The matter was reported to Thika police station and entered in their records vide O.B. No. [particulars withheld]. After the Child was admitted at [particulars withheld] Children's Centre on 14th May 2020, and on the 13th May 200, the Sub County Children Officer Thika wrote a letter for the Child's committal and placement, the child was committed to [particulars withheld] Children's Centre by the children's Court at Machakos vide P&C Case No. 24 of 2020 on 19th May 2020.



3. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services undertook a social inquiry and Home Study and prepared a report dated 2nd March 2023. In the report, they found the Applicants to be suitable parents and issues a certificate serial number [particulars withheld] declaring the child free for adoption. The Court appointed a Guardian Ad litem Hon. Justice REO.
4. Alex Malala a representative from Buckner Kenya Adoption Service confirmed that they placed the child with the applicant and after visiting they are satisfied that they have bonded well and the minor is well integrated into the family of the Applicant. He presented a report dated 2nd March 2023 confirming that the Child is available for adoption and the suitability of the parents to adopt the child.
5. The Guardian Ad Litem, Hon Justice Rose Edwina Ougo filed a report dated 8th May 2023, wherein she confirms that she has visited and investigated the applicants and recommends the Couple to adopt the child.
6. An officer of the Department of Children Services, Nyaranga Odundo conducted home visits and prepared a report dated 7th March 2023. The report established that was found abandoned and has not been claimed by any known relative. That the Couple has the means to cater to the Child's needs. That the child was placed with the Applicants for bonding on 13th April 2022 and has bonded well within the family. The report finds that the applicants meet the legal requirements and recommends that they be allowed to adopt the child.
7. The proposed Legal Guardian, Eunice Rhoda Were also attended court and confirmed she is willing to take up the role of legal guardian. She is a cousin to the 1st Applicant and sister in law to the 2nd Applicant.
8. After carefully assessing the records herein, I am satisfied that the applicant has fulfilled all the legal requirements relating to the Child's adoption.

Section 186 of the *Children Act*, 2022 provides.

- (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.
 - (3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.
8. The Applicants are aged 47 years and 41 years respectively.
 9. Article 53 of the *Constitution of Kenya*, 2010 provides the overarching principles which must apply whenever any decision concerning a child is to be considered. It states:

A Child's Best interests are of paramount importance in every matter concerning the child

10. This principle is restated in Under Section 8 of the *Children Act*, 2022 which provides Best interests of the child.



- (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.

Section 194 (1) (c) of the *Act* also requires that if the adoption order is made the order will be in the best interests of the child, having regard to the wishes of the child, depending on the child's age and understanding, and to the ability of the applicant to maintain

11. In view of the foregoing, the court is of the considered view that it is in the child's best interest to be adopted by the Applicants. Accordingly, I allow the prayers sought in the Originating Summons dated 24th November 2022 and order as follows:
 - i. The Applicants SOO and JSAS be allowed to adopt Baby R S alias Unknown Abandoned Child Male.
 - ii. The Child to be known as RCO.
 - ii. The Child's date of Birth be 15th January 2020 and the place of birth is Thika, Kiambu County.
 - iv. EW is hereby appointed as legal guardian of the Child.
 - v. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children.
 - vi. The Director of Immigration is directed to issue the child with a Kenyan passport.
 - vii. The Guardian Ad Litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 2ND DAY OF JUNE, 2023.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:-

D. Karanai Court Assistant

