



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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**In re AS aka SM aka Baby A (Child) (Adoption Cause E058 of 2023)
[2023] KEHC 20391 (KLR) (Family) (7 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20391 (KLR)

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

ADOPTION CAUSE E058 OF 2023

MA ODERO, J

JULY 7, 2023

IN THE MATTER OF

DMN APPLICANT

JUDGMENT

1. Before this court is the Originating Summons dated March 31, 2023 by which the Applicant Diana Marieta Nene seeks the following orders:-
 1. That the Applicant be allowed to adopt the child currently identified as Baby Amani Shantel.
 2. That henceforth, the child be renamed as Taia Uathimo Suki Nene.
 3. That child's date and place of birth be declared to be September 12, 2021 in Mombasa County.
 4. That the child be presumed to be a Kenyan citizen by birth; and is, consequently, entitled to all the rights and benefits in respect of thereof.
 5. That Beverly Kasiva Mutunga and Cynthia Amondi Onyango be appointed as joint legal guardians of the child in the event that the Applicant herein is incapacitated or in any way unable to discharge her parental obligations.
 6. Spent.
 7. That the Registrar General be directed to make appropriate entries in the Adopted Children's Register"
2. The Application was supported by the Affidavit of even date sworn by the Applicant. The matter was canvassed by way of *vive voce* evidence on the virtual platform.
3. The Applicant is a single woman who has no biological child of her own. She now seeks to adopt a child in order to fulfil her desire to have a child to call her own.



4. The Applicant confirmed that she understands the legal implications of an adoption order. She undertakes to accord to the child all rights due to a biological child.

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 a girl child who is believed to have been born on September 12, 2021. She is therefore now aged two and a half (2 ½) years old and is above the six (6) weeks age limit provided for in law.
8. Little Angels Network which is a registered adoption agency have annexed to their report the original copy of their certificate Serial Number 002282 dated July 22, 2022 declaring the child Free For Adoption. I am satisfied that the legal requirements for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the Applicant is suitable adoptive parent. The Applicant is a Kenyan citizen as evidenced by the Annexed copy of her National Identity Card (Annexure DN'3')
10. The Applicant is a single woman who has never been married and who has no biological child of her own. She now wishes to adopt a child out of a desire to provide a needy child with a home.
11. The Applicant is in a gainful employment. She works as a Financial Risk Analyst with Oxfam GB Annexed to the summons are copies of her payslips (Annexure DN'A-C') as proof of employment.
12. The Applicant has also annexed a copy of her bank statement for an account held with the Standard Chartered Bank (Annexure DN'6A'). Additionally the Applicant owns land in 'Kajiado County' for which she has annexed a copy of the Title Deed (Annexure DN'6B'). I am satisfied that the Applicant is financially stable and is capable of providing for the needs of a growing child.
13. 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.
14. The Applicant has annexed a copy of a clearance Certificate issued to her by the Directorate of Children's Services (Annexure DN'8') confirming that she has no criminal record.
15. The Applicant stated that her extended family are aware of and support her intention to adopt the subject child. She has appointed her cousin and a close friend as the legal guardians for the child. The proposed legal guardians Beverly Kasina Mutunga and Cynthia Amondi Onyango have both signed Affidavit of consent dated March 30, 2023 confirming their willingness to be appointed as the legal guardians for the child.



16. All in all I am satisfied that the Applicant is a suitable adoptive parent.
17. The subject child is believed to have been born on September 12, 2021. On October 3, 2021 was found abandoned in a bush along the Mombasa – Malindi Highway at Shanzu area of Mombasa County. Two (2) good Samaritans who were walking home rescued the baby and reported the matter to the area chief. They later went and reported the abandonment at the Bamburi Police Station vide OB No 41 of October 3, 2021. The child was then taken to Mikindani Hospital for medical attention.
18. Thereafter on October 18, 2021 the Tononoka Children’s Court committed the child to Baby Life Rescue Centre for care and protection. On August 31, 2022 the child was released into the custody of the Applicant under a Foster Care Agreement (Annexure DN’16’)
19. Efforts by police to trace the biological mother of the child have borne no fruit. A final police letter dated May 31, 2022 appears as Annexure DN’23’)
20. Given the fact of 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.
21. 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.”
22. The subject child was found abandoned at the age of about one(1) month old in the Shanzu area of Mombasa County within the Republic of Kenya. The child is therefore presumed to be a citizen of Kenya by birth.
23. 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) In all actions concerning children, whether undertaken by public or
 - (1) 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)
24. This is a child who was abandoned shortly after her birth. She faced an uncertain future living in various children’s Homes. This adoption allows the child the opportunity to be raised in a stable and loving home environment.
25. The child has lived with the Applicant for close to one year. She has undoubtedly bonded with the Applicant whom she views as a mother.
26. I was able to see the child on line. She was a healthy cheerful toddler who was clearly at ease sitting next to the Applicant.
27. A Home visit was conducted by the children’s Department. The Applicant resides in a rented two bed-roomed apartment at Hazina Estate in Nairobi South B. The house is in a secure area and was found to be a suitable environment for raising a young child. The Applicant has employed a Nanny to assist in caring for the child.



28. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Children's Services. All three reports were positive and all recommend the adoption.
29. Finally, I am satisfied that this adoption serves the best interests of the subject child. I therefore allow this application and make the following orders:-
- (1) Diana Marieta Nene is authorized to adopt the child known as Baby Amani Shantel.
 - (2) Upon adoption the child will be known as Taia Uathimo Suki Nene.
 - (3) The child is presumed a citizen of Kenya by birth and is entitled to all the rights and benefits in respect thereof.
 - (4) The Registrar-General is directed to make the relevant entry in the Adopted Children's Register.
 - (5) Beverly Kasiva Mutunga and Cynthia Amondi Onyango are appointed as the legal guardians for the child.

DATED IN NAIROBI THIS 7TH DAY OF JULY 2023.

MAUREEN A. ODERO

JUDGE

