



**In re Baby SN aka TNSM (Child) (Adoption Cause E052 of 2023)
[2023] KEHC 20574 (KLR) (Family) (7 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20574 (KLR)

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

FAMILY

ADOPTION CAUSE E052 OF 2023

MA ODERO, J

JULY 7, 2023

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

AND

IN THE MATTER OF ADOPTION OF BABY SN AKA TNSM (THE CHILD)

BY

IN THE MATTER OF

JMN 1ST APPLICANT

RAA 2ND APPLICANT

JUDGMENT

1. Before this court is the Originating Summons dated March 24, 2023 by which the applicants JMN and RAA seeks the following orders:-

- “ 1. That the applicants be and are hereby authorized to adopt the child currently known as baby SN .
- 2. That if the adoption order is granted the said child is thereafter known as TNSM .
- 3. That the child’s date of birth be declared to be November 11, 2021 and his place of birth to be declared to be Kathaana, Machakos County.
- 4. That the child be considered as a Kenyan citizen.
- 5. That the consent of the biological parents of the child be and is hereby dispensed with since the child was abandoned.



6. That FMN and ENM may be appointed the legal guardians of the child in the even of death of the Applicants or incapacity of the Applicants, rendering them un-available or incapable of taking care of the child.
 7. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register.
2. The Application was supported by the affidavit 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 couple who got married to each other in September 2009. Their union has not been blessed with any child. The couple now wish to adopt the subject child in order to complete their family.
 4. The applicants both confirm that they understand the legal implications of an adoption order. They undertake to accord to the subject child all rights due to a biological child including the 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 a girl-child who was born on November 11, 2021. A copy of the child's Birth certificate appears as Annexure 'RAA 20' to the summons. The child is now aged one and half (1½) years old and is above the six (6) week age limit provided for in law.
8. Kenya Childrens Home Adoption Society which is a registered adoption agency have annexed to their report a copy of their certificate serial Number xxx dated November 16, 2022 declaring the child Free For Adoption. I am satisfied that the legal prerequisites for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. The applicants are both Kenyan citizens who reside and work in Addis Ababa Ethiopia. Copies of their National Identity cards are annexed to the summons [Annexure 'RAA 3(a) and JWAN 3(b)]
10. The applicants are a couple who solemnized their union at the Redeemed Christian Church of God in Nairobi on [Particulars withheld]. A copy of their Marriage Certificate Serial Number 23xxxx appears as Annexure 'RAA 6' to the summons. The couple have no biological children of their own hence their desire to adopt a child.
11. The applicants are both in gainful employment. The 1st applicant works as a Senior Finance Officer with the [Particulars withheld] whilst the 2nd applicant heads the HR Department with the [Particulars



- withheld] also in Ethiopia. The 2nd applicant has annexed to the summons a copy of her payslip [Annexure ‘RAA 4’] as proof of her employment.
12. Additionally, the couple own property in Kenya. They have annexed a copy of a Title Deed for a parcel of land in Kajiado County. I am satisfied that the applicants are financially secure and have the means to provide for the needs of the child.
 13. The applicants are both Christians and intend to raise the child in the Christian faith. They have annexed a copy of a recommendation letter written by Apostle Enos Radeny of the Christ Compassion Ministry where the Applicants both serve as elders [Annexure ‘RAA 8’].
 14. The applicants were both examined by a doctor and were found to be mentally and physically fit. They have annexed copies of clearance certificates issued to them by the Directorate of Criminal Investigations [Annexure ‘RAA 7(a) and 8 (b)’] proving that neither has a criminal record.
 15. The applicant told the court that their respective families are aware of and support their intention to adopt the subject child. They have appointed the brother and sister-in-law of the 1st Applicant as the legal guardians for the child. The proposed legal guardians FMN and ENM have both signed a consent dated March 24, 2023 indicating 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 was born on November 11, 2021. The child’s biological mother whose name was given as MM on January 9, 2022 went and abandoned the child in the homestead of her alleged boyfriend JK in Kangundo. The said JK denied that he was the father of the child. The child’s mother when contacted by authorities stated that she did not want anything to do with the baby.
 18. The abandonment of the child was reported at Kangundo police Station vide OB Number 16 of 17th January 2022. The baby was then admitted at Kangundo Level 4 Hospital for medical attention. Thereafter on January 26, 2022 the Kangundo Children’s Court committed the child to Thomas Barnado House for care and protection. On December 22, 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. The subject child was found abandoned at the age of two (2) months in a homestead in Kangundo Town, Machakos County within the Republic of Kenya. The child is therefore presumed to be a citizen of Kenya by birth.
 21. Efforts made to trace the biological parents of the child have born no fruit. The alleged father has denied paternity. The biological mother rejected the baby and abandoned him. Despite being summoned by authorities to avail herself for questioning the mother switched off her phone and became unreachable.
 22. Given the fact of his 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.



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).

(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]

24. This is a child who was abandoned shortly after the birth. She faced an uncertain future living in various children homes. This adoption allows the subject child the opportunity to be raised in a loving and stable home environment. The child has lived with the applicants for about ten (10) months. She has undoubtedly bonded with the applicants whom she views as her parents.

25. I was able to see the child online. She was healthy serene toddler sitting calmly on the lap of the 2nd applicant.

26. A Home visit was on May 8, 2023 conducted at the applicants home in Syokimau. The home was a rented three bed-roomed apartment which the applicants retain for their use whenever they are in Kenya. The home was in a secure safe environment and was conducive for raising a young child. The Applicants have employed a Nanny to help care for the child.

27. Finally, I find that this adoption will serve the best interests of the subject child. Accordingly I allow this application and make the following orders:-

- (1) The applicants JMN and RAA are authorized to adopt the child known as baby SN .
- (2) Upon adoption the child will be known as TNSM .
- (3) The child is presumed to be a citizen of Kenya 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) FMN and ENM

DATED IN NAIROBI THIS 7TH DAY OF JULY, 2023.

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MAUREEN A. ODERO
JUDGE

