



**In re FM aka SKN (Baby) (Adoption Cause E026 of 2020)  
[2023] KEHC 23250 (KLR) (Family) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23250 (KLR)

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

**ADOPTION CAUSE E026 OF 2020**

**PM NYAUNDI, J**

**SEPTEMBER 22, 2023**

**IN THE MATTER OF**

**MNK ..... APPLICANT**

**JUDGMENT**

1. The Applicant, M N K vide Originating Summons dated 20th December 2019 has made an application for the adoption of BABY F M a.k.a S K NY the child herein. The applicant is not married. She does not have children of her own and is driven by the desire to be a mother.
2. The matter proceeded for hearing via viva voce evidence on the Teams virtual platform on the 27th of July 2023.
3. The Applicant is Kenyan Citizen and of the Christian faith. She avers that she has the financial means and capability to take care of the Child. The applicant is businesswoman, she sells clothes at Gikomba Market. She has had custody of the child for 4 years. She resides in Mwiki, Nairobi County. She fully understands the consequences of an adoption order.
4. The child was born on 7th December 2016 at Kakamega A Referral Hospital to ABA and AIB as per birth certificate serial number 0111611371 annexed. The child biological parents offered out the child for adoption because they are cousins hence the child is considered a taboo in luhya customs. Since ABA was a minor, her mother S M A assisted her through the offering process and she too gave consent on behalf of the family. AIB, ABA and SMA(mother to ABA) were counselled at length and taken through the parent offering child for adoption process and confirmed that it was in the child's best interest to offer the child adoption by signing the certificate of Acknowledgement.
5. The child was handed over to the custody of Divine providence children Home as a child in need of care and protection on 6<sup>th</sup> June 2016. The assistant chief of [ particulars withheld]Location was involved



- and wrote a letter dated 13<sup>th</sup> May 2016 as the Diocese of Kakamega was also involved in counselling of ABA.
6. After six week the child's parents signed their final consent offering their child for adoption before a commissioner of oath on the 16<sup>th</sup> of September 2016. The child was committed to Divine Providence Children Home at the Kakamega Children's Court on 22<sup>nd</sup> February 2017 vide protection and Care case Number 53 of 2017.
  7. Prior to the hearing of the adoption application, Kenya Children's Home Adoption Society prepared and filed a report dated 25<sup>th</sup> August 2020 and issued a certificate serial No. 1498 declaring the child free for adoption. On 29<sup>th</sup> March 2023, the Court appointed Guardian ad litem MGR.
  8. MGR the Guadian ad litem was present in court, she confirmed to the court that she had visited the applicant's home. The child was well taken care of and the applicant bonded well with the child. She recommends the adoption.
  9. An officer of the Department of Children Services, Winfred Ikinya prepared a report dated 12<sup>th</sup> November 2021. The report was countersigned by Hyod Isadia. The report established that the child was born on 7<sup>th</sup> December 2016 at Kakamega A Referral Hospital to ABA and AIB. The child biological parents offered out the child for adoption because they are cousins hence the child is considered a taboo in luhya customs. They were taken through the Explanatory Memorandum of Parent/ Guardian and eventually signed the Certificate of Acknowledgement.
  10. The report further documents that the child was committed to Divine Providence Children Home at the Kakamega Children's Court on 22<sup>nd</sup> February 2017 vide protection and Care case Number 53 of 2017. After six week the child's parents signed their final consent offering their child for adoption before a commissioner of oath on the 16<sup>th</sup> of September 2016. On 19<sup>th</sup> September 2018, Kenya Children's Home Adoption Society issued a certificate serial No. 1498 declaring the child free for adoption.
  11. The proposed Legal Guardians J W K attended court and confirmed she is willing to take up the role of legal guardian. She is the applicant's sister.
  12. 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. The court may make an adoption order on application by-
    - (1)
      - (a) Sole applicant; or
      - (b) Two spouses jointly.
    - (2) The court shall not make an adoption order in any case unless-
      - i. The applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
      - ii. 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.
  13. The Applicant is 50 years.



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.

14. This principle is restated Under Section 8 of the *Children Act*, 2022 which provides

Best interests of the child. In all actions concerning children, whether undertaken.

(1) By public or private social welfare institutions, courts of the 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 and educate the child;

15. 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.

16. Accordingly, I allow the prayers sought in the Originating Summons dated 20<sup>th</sup> December 2019 and order as follows:

I. The Applicant M N K be allowed to adopt Baby F M A.K.A S K M

II. The Child is to be known as S K N

III. The Child be presumed to be a Kenyan citizen by birth.

IV. J W K is hereby appointed as legal guardian of Child

V. The Registrar be and is hereby directed to enter this adoption into the Register of Adopted Children.

VI. The Director Immigration is authorized to issue the child with a Kenyan passport

VII. The Guardian Ad litem is discharged.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2023.**

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**P M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of;

Sylvia Court Assistance

Adoption Cause No. E026 OF 2020 JUDGMENT

