



**In re Adoption of Baby SM aka SMM (Adoption Cause E1119 of 2024)
[2024] KEHC 14167 (KLR) (Family) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14167 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E1119 OF 2024**

SN RIECHI, J

NOVEMBER 14, 2024

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF
BABY SAMUEL MUTHOKA AKA SAMUEL MUSYOKA MUTHOKI**

IN THE MATTER OF

GMM 1ST APPLICANT

AAM 2ND APPLICANT

JUDGMENT

1. The Applicants, GMM and AAM are in a monogamous marriage which was solemnized on 22nd July 2017 at Kyale Catholic Church in Kilungi Makueni County as evidenced by a copy of their marriage certificate serial number 249907 attached to the application.
2. The 1st applicant is a male adult of sound mind and a Kenyan Citizen aged 40 years old born 23rd December 1983 as evidenced by a copy of his National Identification Card serial number 239309XXX attached to the summons. The 2nd applicant is a female adult of sound mind and a Kenyan Citizen aged 34 years old born on 18th November 1989 as evidenced by a copy of her national identification card serial number 230731502 attached to the application.
3. The applicants have filed an originating summons dated 14th May 2024 seeking orders;
 - i. That this Honorable Court be pleased to appoint EM of Post Office Box Number 22872 -00100 Nairobi as "Guardian Ad Litem" for the above named SMM, during the hearing of this Adoption Cause.
 - ii. That the Director of Children Services do investigate the suitability or otherwise of the joint Applicants to adopt the child SMM, herein and file/submit a requisite report to this Honorable Court on its findings.



- iii. That the applicants AAM and GMM be authorized to adopt SMM (minor) and the said child be known as SMM upon the making of an adoption order by this Honorable Court.
 - iv. That AMM be appointed legal guardian to SMM (minor) in the event the Applicants being the adopters herein jointly die or become permanently incapacitated before the infant attains full age.
 - v. That the consent of the surrogate mother of the infant ENO be dispensed with.
 - vi. That the Registrar General makes the appropriate entries into the Adoption Children's Register in respect of baby SMM (minor).
 - vii. That this Honorable Court do issue such other orders as may deem necessary in the best interests of the infant herein.
 - viii. That the costs of this Adoption process and proceedings be costs in the cause.
4. The application is supported by joint affidavit of the applicants sworn on even date.
 5. From the pleadings, the court finds that the 1st applicant is a medical doctor at Mwala Level 4 Hospital. The 2nd Applicant is a TSC teacher. The applicants profess Christian faith.
 6. The evidence on record indicates that the minor Samuel Musyoki is medically the biological child to the joint applicants of this adoption. The applicants jointly entered into a surrogacy Agreement on 31.1.2021 with the Gestation surrogate one ENO that resulted to the birth of the minor in this matter at Kenyatta National Hospital on 5.11.2021. In support the applicants attached a copy of the surrogate agreement and a copy of the child's birth notification number 2165879 to the application.
 7. The surrogate ENO signed a consent on 17.7.2023 to confirm that she no relationship with the child and handed him over for adoption as evidenced by a copy of consent attached to the application.
 8. The evidence on record indicates that a DNA test was done by Kenya Medical Research Institute(KEMRI) that confirmed the relationship of the child to the male applicant and delinked relationship of the child with the gestation surrogate as evidenced by a copy of DNA test results dated 6th January 2022 attached to the application.
 9. The applicants stated that they took the child into their custody immediately after his birth. The applicants have been taking care of their son immediately after his birth.
 10. Prior to the hearing of the adoption application, KKPI Adoption society prepared and filed a report dated 22.7.2024. They also issued a Certificate serial number 901 declaring the child free for adoption as evidenced by the copies of report and certificate declaring a child free for Adoption attached to the application.
 11. The applicants stated that they have no previous criminal record and no pending criminal prosecution as evidenced by their respective police clearance certificates attached to the application.
 12. The applicants are both physically and emotionally fit and healthy to parent, love and care for the child as evidenced by copies of their Medical reports attached to the application.
 13. The applicants are financially stable and they are therefore able to provide fully for the child's need as evidenced by copies of their financial documents attached to the application.
 14. The guardian ad litem Ms.EM Ondimu filed a report dated 15.7.2024 which was favourable and recommended the adoption of the child by the Applicants.



15. Ms. Damaris Kobonah, Children Officer, Milimani Children Court conducted home visits and established that the applicants are financially and emotionally capable of providing for the upkeep and education of the child and filed a report dated 22nd July 2024 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the son of the Applicants and that the Applicants have fulfilled the statutory requirements.
16. The legal guardian Ms. AMM consented to be appointed as legal guardian of the child and she filed a letter of consent attached to the application.
17. The gestation surrogate ENO was present in court virtually during the hearing and testified as follows;

“I am 41 years old. I am the surrogate mother. We entered into a surrogate agreement voluntarily. When the baby was born I handed over to the parents. I have no claim or responsibility over the child.”
18. This is a local adoption and from the record the Applicants have fulfilled all the legal requirements relating to the adoption of the child. The child was in court during the virtual hearing and appeared to have bonded well with the Applicants.
19. I have examined the evidence herein and best interest of the child as required in Article 53 (2) of *the Constitution* and Section 8 the Children’s Act, 2022. I find that it is in the best interest of the child to be adopted by the Applicants. I therefore allow the prayers sought in the amended originating Summons dated 14th May 2024 and Order as follows:
 - i. The Applicants AAM and GMM are hereby allowed to adopt SMM who shall henceforth be known as SMM.
 - ii. AMM is hereby appointed the legal guardian of the child.
 - iii. The Registrar General is directed to enter this Order in the Adopted Children Registry.
 - iv. The guardian ad litem is hereby discharged.

DATED AT NAIROBI THIS 14TH DAY OF NOVEMBER, 2024

S. N. RIECHI

JUDGE

