



REPUBLIC OF KENYA



**In re Adoption of Baby AL (Minor) (Adoption Cause E152 of 2024)
[2024] KEHC 15529 (KLR) (Family) (5 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15529 (KLR)

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

FAMILY

ADOPTION CAUSE E152 OF 2024

CJ KENDAGOR, J

DECEMBER 5, 2024

IN THE MATTER OF BABY AL (MINOR)

JUDGMENT

1. Before this Court is the application dated 12th July, 2024. The Applicant ENM is seeking to be authorized to adopt Baby AL hereinafter referred to as the child and upon adoption, the child is to be known as SBN. MMK be appointed as the child's legal guardian upon granting of the adoption orders.
2. The Applicant is a Kenyan citizen as evidenced by their Kenyan National Identity Card. The Applicant is single, she broke up from her relationship due to her inability to conceive. The Applicant is self-employed and her financial capability and ability to provide for the child is evidenced by her bank statement. Her health status is good as is evidenced by her medical report and with no any previous criminal record as is evidenced by her Certificate of Good Conduct issued by the Directorate of Criminal Investigations. She has indicated that she would like to legalize her relationship between the child through adoption to enable the child become a complete member of the family. The applicant has also expressed strong desire to enlarge her family and accord an opportunity to the less fortunate.
3. The report from the Ministry of Labour and Social Protection State Department of Social Protection - Directorate of Children's Services (Nairobi County) dated 19th November, 2024 indicates that the child is female and 5 years 3 months old having been born approximately on 25th July, 2019. The child was found abandoned at dumpsite at county council Estate in Naivasha on the same day she was born by a good Samaritan. The matter was reported to Naivasha police station vide OB number 69/25/7/2019 and later committed to New Life Home Trust Nakuru. The baby was placed with Applicant for mandatory bonding period prior to adoption on 13th November, 2020 and she has been under continuous and care and control of the Applicant. The child was declared free for adoption on 13th November, 2020 by Buckner Kenya vide freeing Certificate Serial Number 477.



4. MMK the proposed legal guardians is a business lady, separated with two children also she is the sister to the applicant. The applicant appointed the guardian because she understands family dynamic well and the guardians gave her consent.
5. There is consistent message for ENM to adopt the child. They would like to legalize the relationship between the child through adoption to enable the child become a complete member of the family, to bond more as family and to enlarge their family.
6. The child is a Kenyan citizen by virtue of Article 14 (1) which provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.
7. In light of the best interests of the child principle provided for under Article 53 (2) of the Constitution of Kenya, 2010. Sections 8 (1), (2) and (3) of the Children's Act No 29 of 2022 and the 1st Schedule of the Children's Act No 29 of 2022, this Court has an obligation to prioritize the child's best interests in making decisions touching on her.
 - a. Article 53 of the Constitution, 2010 states that a child's best interests are of paramount importance in every matter concerning the child.
 - b. Sections 8 (1), (2) and (3) of the Children's Act No 29 of 2022 provides as follows;
 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.
 2. All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:-
 - a. safeguard and promote the rights and welfare of the child;
 - b. conserve and promote the welfare of the child; and
 - c. secure for the child such guidance and correction as is necessary for the welfare of the child, and in public interest.
 3. In any matters affecting a child, the child shall be accorded an opportunity to express their opinion, and that opinion shall be taken into account in appropriate cases, having regard to the child's age and degree of maturity.
 - c. The First Schedule as provided for under Section 8 (1) of the Children's Act No 29 of 2022 provides best interests considerations to be as follows:
 1. The age, maturity, stage of development, gender, background and any other relevant characteristics of the child.
 2. Distinct special needs (if any) arising from chronic ailment or disability.
 3. The relationship of the child with the child's parent(s) and/or guardian(s) and any other persons who may significantly affect the child's welfare.



4. The preference of the child, if old enough to express a meaningful preference.
 5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.
 6. The stability of any proposed living arrangements for the child.
 7. The motivation of the parties involved and their capacities to give the child love, affection and guidance.
 8. The child's adjustment to the child's present home, school and community.
 9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/or guardian (s), including physical access.
 10. The capacity of each parent and/or guardian (s) to cooperate or to learn to cooperate in child care.
 11. Methods for assisting parental and/or guardian cooperation and resolving disputes and each parent's/ guardian's willingness to use those methods.
 12. The effect of the child if one parent/guardian has sole authority over the child's upbringing.
 13. The existence of domestic abuse between the parents/guardian(s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child.
 14. The existence of any history of child abuse by a parent and/or guardian(s); or anyone residing in the same dwelling as the child.
 15. Where the child is under one year of age, whether the child is being breast - fed.
 16. The existence of a parent's (s) or guardian's (s) conviction for a sex offense or a sexually violent offense under the [Sexual Offences Act](#).
 17. Where there is a person residing with a parent or guardian, whether that person; -
 - a. Has been convicted of a crime under this Act, the [Sexual Offences Act](#), the Penal Code or any other legislation.
 - b. Has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.
 18. Any other factor which may have a direct or indirect effect on the physical and psychological well -being of the child.
8. The report from the Ministry of Labour and Social Protection State Department of Social Protection - Directorate of Children's Services (Nairobi County), the report from Buckner Kenya Adoption Society, the guardian *ad litem* and the proposed legal guardian indicate that the child will be well taken care of in the care and custody of the adoptive parent.
 9. I find that this adoption gives the child a chance to have better life and education in a loving and stable home with the adoptive parent.



10. In the circumstances, I allow the originating summons dated 12th July, 2024 and make the following orders:
- a. The Applicants ENM be authorized to adopt the child known as Baby AL.
 - b. Upon adoption, the child shall be known as SBN.
 - c. MMK be appointed as legal guardian of the child.
 - d. The Registrar General is directed to make the relevant entries in the Adopted Children's Register in respect of the child.
 - e. The Registrar of births and deaths is directed to issue a birth certificate in respect of the child's new name.

It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 5TH DAY OF DECEMBER, 2024.

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms. Kemunto present for Applicant

