



**In re SAW (Minor) (Adoption Cause E161 of 2025)
[2025] KEHC 13733 (KLR) (Family) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E161 OF 2025
CJ KENDAGOR, J
SEPTEMBER 18, 2025
IN THE MATTER OF THE CHILDREN’S ACT, 2001
AND
IN THE MATTER OF BABY SAW (MINOR)**

IN THE MATTER OF

**EWN 1ST APPLICANT
IAAM 2ND APPLICANT**

JUDGMENT

1. Before this Court is the application dated 11th June, 2025. The Applicants, EWN and IAAM, are seeking to be authorized to adopt SAW, a minor, hereinafter referred to as (“the child”) and upon adoption, the child is to be known as SAM. PN is to be appointed as the child’s legal guardian upon granting of the adoption orders.
2. The Applicants are a married couple as evidenced by a copy of the marriage certificate and together they have two issues: JJN, who is 17 years old and NM, who is 14 years old. The 1st Applicant is a Kenyan citizen as evidenced by a copy of her national Identity card, while the 2nd Applicant is a Belgian, as evidenced by a copy of his passport. The biological mother of the minor is a sister to the 1st Applicant and is unable to take care of the child as she is a drug addict, and the father is equally unable to take care of the minor. The biological mother got the child when she was in form four and the biological father has never been present in the minor’s life since she was born but the Applicants had to look for him to sign the consent for adoption, and he was present during the assessment. They have both voluntarily given their consents dated 11th March 2025, stating that they are not in a good financial state and that the Applicants have been taking care of the child since she was born.



3. The current guardian of the baby, one SN who is the 1st Applicant's mother, has consented to the application for adoption. The biological children to the Applicants are aware of the adoption process, which they support and have given their consents, both dated 25th March, 2025. The Applicants also have a positive recommendation from their pastor. The minor who was observed by the Court appeared happy and healthy and was able to communicate that she understands the adoption proceedings and has accepted the same.
4. The 1st Applicant is a professional caregiver, while the 2nd Applicant is the head butcher at Alvo Company in Belgium. They are financially stable, hence their financial capability and ability to provide for the child, as evidenced by copies of their financial statements.
5. The report from the Ministry of Labour and Social Protection State Department of Social Protection - Department of Children's Services (Nairobi County) dated 21st July, 2025 indicates that the child is 8 years old having been born on 26th September 2016. The child was declared free for adoption on 21st May, 2025 by Kenya Children's Home Adoption Society vide freeing Certificate Serial Number 1076.
6. PNW who is the brother to the 1st Applicant and uncle to the child herein, is the proposed legal guardian. He told the Court that he understands his role as a legal guardian and gave his consent voluntarily.
7. The Applicants would like to give baby SAW a close parental love and believe that adoption is the rightful way to take up the parental responsibilities of the minor since they have been providing for the child and feel the need to be closer to her. They would also want to make the minor's dream of joining them in Belgium a reality.
8. 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.
9. 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.
10. The report from the Ministry of Labour and Social Protection, State Department of Social Protection - Department of Children's Services (Nairobi County), the report from Kenya Children's Home 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 parents.
11. I am satisfied that this adoption serves the child's best interests.
12. In the circumstances, I allow the application dated 11th June, 2025 and make the following orders:
 - a. The Applicants EWN and IAAM are authorized to adopt the child known as SAW.
 - b. Upon adoption, the child shall be known as SAM.
 - c. PNW is appointed as the legal guardian of the child.
 - d. The Registrar General to enter this adoption in the Adoption Register.
 - e. The guardian ad litem is hereby discharged.
13. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 18TH DAY OF SEPTEMBER, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

