

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
ADOPTION CAUSE NO. E196 OF 2025
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF ADOPTION OF BABY V

BY:

SWM

.....

APPLICANT

JUDGMENT:

1. Before this Court is an Originating Summons dated 14th July, 2025. The Applicant **SWM** is seeking to be authorized to adopt baby **V**, hereinafter referred to as (“the child”) and upon adoption, the child is to be known as **TN**. The Applicant has proposed that **MWM** be appointed as the child’s legal guardian upon the granting of the adoption orders.

2. The Applicant is a single lady and she does not have any biological children of her own. She is a Kenyan citizen, as is evidenced by a copy of her Kenyan National Identity card. She works as a business lady, doing freelance writing, and is a pastor, hence her financial capability and ability to provide for the child, as evidenced by copies of her financial documents and she has assets in her name. Her health status is good, as evidenced by the medical report and she does not have any previous criminal records as evidenced by her Certificate of Good Conduct issued by the Directorate of Criminal Investigations. She has indicated her desire to adopt a child is driven by the fact that she has no children of her own and wishes to grow her family and provide a home for a needy child. The child has been in her custody since **3rd November, 2023**.

3. **MWM** who is the proposed Legal guardian, is **SWM's** sister and she told the Court that has consented to be the legal guardian. She also told the Court that she knows about the application and that she is ready to take up the role.

4. The report from the Ministry of Gender, Culture and Children's Services, State Department for Children's Services (Nairobi County) dated **19th September, 2025**, indicates that the child is 3 years 1 month old, having been presumed to have been born on 6th August, 2022. She is a Kenyan who was found abandoned on 19th December, 2022 at Pantake Factory in Viwandani Ward of Nairobi County by the security guard who reported the matter at Lunga Lunga Police Station where the social welfare assistant, one **MG** rushed to the scene and rescued the baby. Efforts to trace the parents of the child have not been successful, and no one has claimed the child since then. The child was declared free for adoption on **22nd September, 2023**, by Child Welfare Society of Kenya vide freeing certificate number **1128**.

5. 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.

6. 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 him.

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.

7. The report from the Ministry of Gender, Culture and Children's Services, State Department for Children's Services (Nairobi County), the report from Child Welfare Society of Kenya, the guardian *ad litem* and the proposed legal guardian indicate that the child is well known to the

adoptive parent and that she will be well taken care of in her care and custody.

8. I am satisfied that the Applicant has a genuine desire to adopt the child. She is suitable as an adoptive parent.

9. I find that this adoption gives the child a chance at a better life and education in a loving and stable home with the adoptive parent. I do not doubt that the child has bonded with the Applicant.

10. Based on the foregoing, I am satisfied that this adoption serves the child's best interests. As such, I do allow this application and make the following orders:

(a) The Applicant SWM be and is hereby authorized to adopt baby V, alias unknown child.

(b) Upon adoption, the child shall be known as TN.

(c) MWM is hereby appointed as the legal guardian of the child.

(d) The Registrar General is hereby directed to make the appropriate entry in the Adopted Children's register.

(e) The child is presumed to be a Kenyan citizen born in Kenya.

(f) The Director of Immigration Services do issue the child with a Kenyan passport.

(g) The consent of the biological parents is hereby dispensed with as the child was abandoned.

(h) The guardian ad litem is hereby discharged.

11. It is so ordered.

DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on this 27TH day of NOVEMBER, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Susan, present.