



**In re Adoption of Baby Boy aka SA (Adoption Cause E037 of 2024)  
[2025] KEHC 5255 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5255 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
ADOPTION CAUSE E037 OF 2024  
RC RUTTO, J  
APRIL 29, 2025  
THE MATTER OF THE CHILDREN ACT,  
CAP 141 OF THE LAWS OF KENYA  
AND  
IN THE MATTER OF ADOPTION OF BABY BOY AKA SA**

**IN THE MATTER OF**

**DWV ..... 1<sup>ST</sup> APPLICANT  
FMM ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is the Originating Summons dated 16<sup>th</sup> December 2024, Statement in Support of the Application for an Adoption Order and Affidavit in Support of the Application, seeking:
  - i. That the Applicants be authorised to adopt Baby SA a child who is to be known as SMW and the Registrar General be directed to enter this adoption into the Register of Adoptions
  - ii. That JNV be appointed as the legal guardian of the child
  - iii. That the child be presumed to be born in Kitengela, Kajiado County in the Republic of Kenya.
2. The matter was canvassed by way of viva voce evidence where the Applicants, the guardian ad litem, the proposed legal guardian, the Children Officer Machakos County, and an officer from the Buckner Kenya Adoption testified before court.
3. The evidence on record indicates that the child in this matter is estimated to have been born on 1<sup>st</sup> September 2023. The child was found abandoned on 29<sup>th</sup> December 2023 behind East Mart Supermarket in Kitengela Sub-County. The matter was reported to the Athi River Police Station vide



Occurrence Book Number 35/29/12/2023 and the child was committed to Mahali pa Maisha Infant Rescue Centre for care and protection through the Children's Court at Mavoko Protection and Care Case No E007 of 2024.

4. As per section 156(1) of the *Children Act*, the Buckner Kenya Adoption Services, a registered Adoption Agency declared the child free for adoption. On 24<sup>th</sup> July 2024 the agency issued a Certificate Serial No 0XX5 declaring the child free for adoption. This certificate was submitted to the court by an officer of the Society together with a report verifying that the legal requirements for adoption to have been satisfied and that the adoption would be in the child's best interest. Additionally, the child was placed in the applicants care and they have had the custody of the child.
5. The Applicants are a couple who made an application to the adoption society to be placed with a baby boy aged less than one year. They were taken through an interview, a home assessment and pre-placement counselling.
6. The 1<sup>st</sup> Applicant is aged 51 years and a driver by profession while the 2<sup>nd</sup> Applicant is 45 years and a business lady. They are both Kenyan citizens residing in Kyumbi, Machakos.
7. The Applicants confirmed that they are desirous of adopting baby Shadrack. They also stated that they were financially capable of providing for the child. They confirmed that their extended families have both been very supportive and have accepted the child. That the child has also bonded and settled very well and brings so much joy in their lives. They confirmed that they fully understand the implications of an adoption order and the obligations therein.
8. I have considered the Summons, the evidence on record as well as the various reports filed in a bid to determine whether the Applicants are suitable adoptive parent.
9. In their statement in support of the application, the applicant's stated that they had not been blessed with a child of their own and were driven by their love for children and the need to expand their family and to give a child a family and an environment where he can grow and feel loved. The applicants stated that they are of good physical health and emotional fitness to parent the child as evident by the medical reports provided; that they are financially stable to provide for the child and are persons of good character and standing with no criminal record. The applicants are practicing Christians.
10. The Applicants presented proof of financial ability, recommendations and referee information, copies of clearance certificate from the Kenya Police Service as proof that she has no criminal record, all pursuant to the provisions of The Children (Adoption) Regulations, 2020. The Applicants also confirmed that they fully understand and are ready for the implications of an Adoption order.
11. The Applicant proposed JNV as the legal guardians for the child. The said legal guardian is a sister to the 1<sup>st</sup> applicant. She signed a consent dated 16<sup>th</sup> December 2024. The proposed legal guardian also testified and informed court that she is willingly taking up the role and was aware of her the roles and obligations that come with appointment more so if the applicants are unable to take care of the minor.
12. The Children Services office in their report dated 20<sup>th</sup> March 2025 recommended that the applicant be allowed to adopt the minor since among others that the applicants have proved to be capable of taking parental responsibilities of the minor in this matter during the statutory placement period prior to adoption; the child was reported abandoned and all attempts to trace the parents have been unsuccessful; the bonding process had taken up well, the families have been very supportive and that it was in the best interest of the minor to grow up in a family setting as opposed to an institution. This position was also reiterated by the officer from the Buckner Kenya Adoption Services through their



- report dated 24<sup>th</sup> March 2025 as well as the guardian ad litem who also filed a report dated 20<sup>th</sup> March 2025 stating that the adoptive parents are happy to be parents and are capable of raising the child.
13. Based on the oral testimonies evidence adduced before the court, the supporting documentation availed I am satisfied that the Applicants are suitable to be adoptive parents.
  14. From evidence on record the applicants are physically, emotionally, financially and mentally fit to be adoptive parents and provide guidance to the child as evidenced by copies of the supporting documentation. The applicants stated that they have no previous or pending criminal record or prosecution as evidenced by copies of police clearance certificate attached to the application.
  15. Article 14 (4) of The Constitution provides as follows:

A child found in Kenya who is, or appears to be, less than 8 years of age, and whose nationality and parents are not know, is presumes to be a citizen by birth.
  16. The child was found abandoned within the Republic of Kenya a few months after he was born. I, therefore, declare that the child is a citizen of Kenya by birth.
  17. From the records and evidence presented before this court all efforts by the police to trace the child's parents/relatives have borne no fruit. Vide a letter dated 16th January 2024, Athi River Police Station stated that no one had come forth to claim the baby. Subsequently on and 11<sup>th</sup> July 2024 they issued a second letter indicating that nobody had claimed the child and a search for his parents and kin had been futile. Therefore, there exists no known person from whom consent for this adoption can be sought and/or obtained. I, therefore, waive this requirement in line with section 185 (4)(b) of the Children Act.
  18. In accordance with Section 8 of the Children Act, the court is required to take into account the best interest of the child in all matters concerning their welfare. In this case, the child was abandoned just a few months after birth and subsequently faced an uncertain and potentially unstable future in a children's home or similar care institutions. The proposed adoption presents a significant opportunity for the child to grow up in a stable loving and supportive family environment. This is not only beneficial for the child's emotional and psychological development but also in line with the recommendation made by the Children Officer who emphasized the importance of such an environment for the child's wellbeing.
  19. I have carefully considered the Reports submitted by the Adoption Agency, the Guardian ad Litem, the Director of Children Services. All these reports were positive and recommended the adoption. Additionally, I had the opportunity to personally observe the child in the presences of the applicants. The child appeared to be at ease and interacted comfortably with them showing signs of happiness. It is my view therefore that the applicants are capable of nurturing and providing a home where the child's needs will be well met.
  20. The upshot of the above is that the Originating Summon dated 16<sup>th</sup> December 2024 is hereby allowed in the following terms;
    - i. That the Applicants DWV and FMM are allowed to adopt the child currently identified as Baby SA;
    - ii. Upon adoption, the child shall be renamed as SMW;
    - iii. The child is declared to be a Kenyan citizen by birth, entitled to all the rights and privileges under the Constitution of Kenya and all applicable laws;
    - iv. JNV is appointed as Legal Guardian of the child,



- v. The Guardian ad Litem is hereby discharged;
- vi. That the Registrar-General is directed to make the appropriate entries in the Adopted Children's Register.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 29<sup>TH</sup> DAY OF APRIL, 2025.**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....for Applicants

Sam Court Assistant

