



**In re SN (Child) (Adoption Cause E038 of 2022)  
[2024] KEHC 639 (KLR) (26 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 639 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
ADOPTION CAUSE E038 OF 2022  
A MSHILA, J  
JANUARY 26, 2024  
IN THE MATTER OF THE CHILDREN’S ACT  
AND  
IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER OF  
BABY S.N. (A CHILD)**

**IN THE MATTER OF**

**CKN ..... 1<sup>ST</sup> APPLICANT**

**RMB ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. The application is brought by way of an Originating Summons and is dated the 18<sup>th</sup> day of November, 2022 and is premised under the provisions of Sections 154, 156(1), 157(1), 158(1), 159(1) (a) (i)(4), (6),(7), 160(1),(2),(3),(4), 161, 163, 164(1) and 170 of the Children’s Act 2001, Section 24 of the Interpretations and General Provisions Act and all other enabling provisions of the Law. The Applicants seek the following Orders;

- a. That MNM of P.O. Box 1XX1-00232 Ruiru be appointed as Guardian Ad Litem of Baby S.N.;
- b. That the Applicants C.K.N. and R.M.B. be authorized to legally adopt Baby S.N. who will be known as S.N.N.;
- c. That Baby S.N. be presumed to be a Kenyan citizen by birth;
- d. JWN and RNN be appointed as next of kin and legal guardians to Baby S.N.;



- e. The Registrar General do make the appropriate entry of S.N.N. in the Adopted Children's Register.
2. The application was supported by a Statement and Affidavit made by the Applicants; The Guardian Ad Litem MNM was appointed on the 23<sup>rd</sup> February, 2023; This court directed the Director of Children's Services and the Guardian Ad Litem to carry out a home visit and do investigations and to file their Reports.
3. After visiting and interrogating the Applicants the Gatundu North Sub- County Children's Office and the Guardian *Ad Litem* filed their respective Reports on the Applicants suitability to adopt baby S.N.; the report dated 9<sup>th</sup> March, 2023 prepared by the Gatundu North Sub-County Childrens Office was duly filed in court and it pointed out the short comings in the adoption process; This report correctly captured its concerns that the adoption process though it may appear to be a kinship adoption as set out Section 193(1) of the *Children's Act* it has all the elements of an inter-country adoption which currently is affected by a Cabinet moratorium; the report reads as follows;
- (i) Whereas the child stands to benefit from the adoption it has both Local and Inter-Country dimension since the 2<sup>nd</sup> Applicant is a Congolese by nationality married to the Kenyan both living in Sweden, hence this matter may be affected by the Cabinet moratorium in place on inter-country adoption that was approved on 26<sup>th</sup> November, 2014 ...'
4. After reading and taking into consideration the contents of this Report this court is not satisfied that all the legal requirements have not been adhered to notably; at the time of filing this application the prospective adoptive parent being the 1<sup>st</sup> Applicant had dual citizenship of Kenya and Sweden however the 2<sup>nd</sup> prospective parent (RB) is neither Kenyan nor Swedish and it is reported that she only has permanent residency in Sweden as a refugee; It would therefore be prudent and in the best interest of the minor if the 2<sup>nd</sup> Applicant awaits approval of her Kenyan Citizenship so that both Applicants can qualify to adopt the child as Kenyans citizens in accordance with Section 192(b) of the *Children's Act*, 2022.
5. Secondly, it is noted from the documents produced into court demonstrate that the child has not been properly certified and declared free for adoption in accordance with the current *Children's Act*, 2022.
6. For the reasons stated above this court is not satisfied that the Applicants have fulfilled all the pre-requisites for the adoption orders; the application for adoption will be held in abeyance pending compliance with the afore-going legal requirements.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 26<sup>th</sup> DAY OF JANUARY, 2024.**

**HON. A. MSHILA**

**JUDGE**

In the presence of;

Mourice – Court Assistant

– for Applicant

