



REPUBLIC OF KENYA



**In re SO aka PU (Child) (Adoption Cause E023 of 2023)
[2024] KEHC 3102 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 3102 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
ADOPTION CAUSE E023 OF 2023
MW MUIGAI, J
FEBRUARY 29, 2024
N THE MATTER OF CHILDREN ACT 2022
AND
IN THE MATTER OF BABY SO A.K.A. PU (CHILD)**

JUDGMENT

1. The Applicants herein, LMM – ID. Number 94XXX26 and EMM - ID. Number 14XXXX18 (“the Applicants”) sought by their application to be allowed by this Court to adopt Baby SO a.k.a PU (hereafter “the child”).
2. Vide Originating Summons application dated 27th September, 2023 the Applicants sought among other orders; that the Applicants herein LMM and EMM be authorized to adopt baby SO a.k.a PU an infant who is to be known as BMM; that the child’s date and place of birth be declared to be 8TH January, 2022 at Mbagathi District Hospital; that the child be presumed to be a Kenyan citizen by birth, and consequently entitled to all the rights and benefits in respect thereof; that JMM and CWM be appointed as the Legal Guardians in the event that the Applicants herein are incapacitated or unable to discharge their parental obligations of the child upon the granting of the Adoption Order; The Applicants herein further sought orders; that MMM be appointed as the Guardian *Ad Litem* in this cause and that this Court directs the Department of Children’s Services, Machakos (Masinga) to compile a requisite Report on the Applicants fitness to adopt the Baby SO a.k.a PU under the *Children’s Act*. MMM of ID No.22XXXX40 was appointed by this Court as the Guardian *Ad Litem* on 22/11/2023.
3. The child (SO a.k.a PU) the subject of the present adoption proceedings was presumably born on 8th January, 2022 to one SO at Mbagathi Hospital as evidenced by an acknowledgement of Birth Notification Serial No.9521152. The child was abandoned on 18/01/2022 in the New Born Unit at Mbagathi District Hospital after his mother absconded from the Hospital and never returned to claim him. The matter was reported at Kenyatta Police Post *vide* OB No.02/20/01/2022. The Hospital further reported the child’s abandonment to the Sub-County Children’s officer, Kibra who requested New Life Home Trust to offer the child temporary care and protection pending the processing of a



formal committal. The child was later discharged from the Mbagathi hospital and handed over to New Life Home Trust on 28th February 2022 and renamed PU.

4. The minor was committed to New Life Home Trust for Care and Protection on 11th April, 2022 by the Children's Court a Nairobi in Protection and Care Case No. E088 of 2022 for a period of three (3) years.
5. The Kenyatta Police Post in their final letter dated 26th August, 2022 with regard to the child's abandonment confirmed that no one came forward to claim the child and their efforts to trace the kindred of the child have been futile.
6. The officials of the Adoption society further made enquiries from the Administrators of New Life Home Trust who confirmed that no relative had ever turned up to claim the child. The minor was declared free for adoption on 15th September, 2022 by the Case Committee of Buckner Kenya Adoption Services *vide* Certificate Declaring Child Free for Adoption Serial No.0594.
7. The following documents were availed from Kenya Children's Homes Adoption Society for Baby SO aka PU.
 1. Birth Notification serial No. 95XXXXX2
 2. Initial Police Letter from Kenyatta Police Post
 3. Referral letter by the Sub-County Children's Officer – Kibra Sub- County dated 28th February, 2022
 4. Letter from the Social Worker from the Mbagathi District Hospital dated 25th February, 2022
 5. Admission Form into New Life Home Trust dated 28th February, 2022
 6. Baby assessment form
 7. Committal Order given on 11/04/2022
 8. Final Police letter from Kenyatta Police Post
 9. Child freeing summary from Kenya Children's Home
 10. Certificate of declaring a child free for adoption Serial No.0594
8. The Applicants herein LMM and EMM are residents of Kaewa, Masinga Sub-County within Machakos County. They are husband and wife - married on 16/02/1996 and solemnized on 8/01/2021 as per attached copy of marriage certificate Serial Number 132xxx The Applicants annexed the following documents in support of their application; Applicants copies of Identification cards Certificate of Marriage Financial statement Medical Reports for both Applicants Police clearance Certificates for both Applicants Referees Forms & Chief's Referee letter Affidavits sworn by the proposed legal Guardians and copies of their Identity Cards.
9. The Guardian *Ad Litem*, MMM of ID No.22380940 a Social Worker filed Affidavit of Fitness and Consent on 5th October, 2023 and also filed the statutory Report in which she noted that the proposed adoption of the child by the Applicants would be in the best interests of the child.
10. The Buckner Kenya Adoption Services filed their report dated 10th January, 2024 in Court on 7th February, 2024. Ms Irene Ogotu from the Society appeared in Court on 22/11/2023 in respect of these Adoption Proceedings. She told the Court that the baby SO aka PU was born at Mbagathi District Hospital on 8/01/2022 and abandoned by his mother at the same facility on 18/01/2022. The matter



was reported to Kenya Police Post. Later the child was placed at New Life Home Trust on 28/02/2022. The child was declared free for adoption on 15/09/2022. The Applicants herein were presented to the Case committee on 3/06/2022 and home visits and interviews conducted and were found fit. The Applicants were placed with the baby SO aka PU the child herein on 14/10/2022.

11. According to the Report the Applicants made a joint adoption application to Kenya Children's Home Adoption Society on 30/12/2021 and it was their 1st adoption. The Applicants applied to be placed with a baby boy. The Applicants were found eligible and a case Committee sitting on 3/06/2022 approved their application and were placed with the baby SO alias PU aged 10 months on 14/10/2022. Relevant interviews and home assessment were carried out as well as the pre-adoption counselling. The child has bonded well with the prospective adoptive parents and the final follow-up session was conducted on 15/02/2023.
12. The Applicants are a couple having been married in February, 1996 and later legalized their marriage on 8/01/2021 vide Certificate of Marriage Serial No.132353. The Applicants have not been blessed with a biological child of their own due to unexplained fertility issues. Their motivation towards adoption is due to their desire to become parents. The Applicants live in their own 3 bedroomed house in the outskirts of Kaewa market, Masinga Sub-County within Machakos County. The Applicants are Christians fellowshipping at Africa Inland church Kaewa. The Applicants are confirmed to be of good general health (medical reports are attached), they do not have Criminal Record (Police clearance reports attached). The Applicants extended family are supportive of the Adoption whereby the Applicants have appointed JMM and CWM the 1st Applicants brother and sister in law as the proposed Legal Guardians of the child. They have accepted to be the Legal Guardians and confirmed that they understand their roles as Legal Guardians. The Applicants are stable financially, the male Applicant works with YP People Company as a driver earning a gross pay of Kshs.60,000/- per month (pay slip & financial statements attached) while the female Applicant is a business lady operating a general shop with a monthly income of 15,000/- (permit from the Machakos County government and Mpesa Transactions) They have assets in terms of land and have attached Title Deed for their land Ref No. Kivaa/Kaewa/1033. Since the placement with the minor on 14/10/2022 to date the Applicants have taken good care of baby SO a.k.a PU and have even introduced him to their extended family. The Adoption Agency recommended the Adoption.
13. The Director of Children's Services filed their report dated 5/02/2024 in respect of the proposed adoption of the child by the Applicants. Francis Njagi Kariuki the Masinga Sub County Children Officer appeared in Court on 22/11/2023 in respect of the proposed adoption of the child by the Applicants. He told the Court that he visited the Applicants home and found that the home environment is conducive and adequate for wellbeing of the child. The applicants are of good behaviour and are able to take care of the child. They live in their own permanent residence at Kaewa Masinga Sub-County.
14. Similarly the Report indicated that during the home visits it was observed that the Applicants live in their own house which is spacious and well-furnished. They use solar for lighting and have piped water and also harvest rain water. The applicants do not have a child of their own. They own a 2.3 Ha farm which they cultivate and rear livestock. The Applicants understand that the child has a right to inheritance just as a biological child. They recommended the adoption.
15. The Guardian *Ad Litem*, MMM of ID No. 2238xxxx filed her Report dated 30th January, 2024 in support of these Adoption proceedings. She appeared in Court on 8/02/2024. She told the Court that she visited the Applicants and observed that the adoptive mother takes care of the child and they have bonded very well. The mother to the 1st Applicant lives nearby and is supportive of the grandchild. The 2nd Applicant runs a shop where she goes with the child. Similarly the report indicated that during



the home visits it was observed that the child was joyous and playful, the child has bonded well with the Applicants and they seemed inseparable. The Applicants are financially stable hence able to provide for the child. The Guardian *Ad litem* recommended the adoption.

16. The Legal Guardians JMM and CWM - of Identification Card Numbers 1443xxxx and 2586xxxx respectively are a married couple (brother & sister in law to the 1st Applicant) they filed their Affidavit of proposed Legal Guardians sworn on 30/08/2023. They stated that they are aware that their role is to acquire parental responsibility and rights over the child in the unfortunate event that anything happens to L and E as would incapacitate them and/or prevent them from taking care of the child including death, physical impairment or debilitating disease.
17. All the Statutory Reports that have been filed in respect of the proposed adoption of the child by the Applicants have recommended that this Court allows the adoption of the child. This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicants has fulfilled all the legal requirements relative to the adoption of the child.
18. The home visits by the Guardian *ad Litem*, the Adoption Society Representative and the Director of the Children's Services established that the Applicants are financially and socially stable and have emotional capability to provide for the upkeep and education of the child and give parental care. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well. The child considers the Applicants to be his parents.

Disposition

1. On the basis of a careful examination of the documents presented before this Court as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicant's application.
2. The Applicants, LMM and EMM are hereby allowed to adopt Baby SO aka PU.
3. Henceforth, the child shall be known as BMM.
4. The child's date of birth is 8TH January, 2022 and the place of birth shall be Mbagathi District Hospital.
5. The child is a Kenyan Citizen by birth and entitled to all rights of a Kenyan citizen.
6. JMM and CWM shall be the Legal Guardians of the child should such eventuality arise.
7. This Court directs the Registrar General to duly enter this order in the Adoption Register.
8. That the Directorate of Children Services to carry out supervision on the said adoption and file a report on the ongoing safety/security of the child within one year of the Adoption in the best interests of the child under Section 8 of *Children's Act* 2022.
9. The Guardian *ad litem* is hereby discharged.

It is so ordered.

JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS THIS 29TH DAY OF FEBRUARY, 2024 (PHYSICAL/VIRTUAL CONFERENCE).

M. W. MUIGAI

JUDGE

