



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. E158 OF 2021 (OS)**

**AND**

**IN THE MATTER OF THE CHILDREN'S ACT (NO. 8 OF 2001)**

**AND**

**IN THE MATTER OF BABY J**

**AND**

**AN APPLICATION FOR ORDERS OF ADOPTION OF BABY J BY**

**TKE**

**JUDGEMENT**

1. By the Originating Summons dated 30.8.21, the Applicant TKE seeks to adopt a child known as Baby J. Baby J was born on 16.6.16 at Mbagathi District Hospital as indicated in notification of birth, serial No. xxxx. The child was born to a 16 year old girl named FK as a result of rape by her step brother, who has since absconded. Under Luhya customs, a child born of incest is a taboo and cannot be accepted in the society. In order to prevent the child by being ostracized by the community, the mother gave the child up for adoption.
2. FK's mother RB and sister CM requested Buckner Kenya to identify a family for the child. Rose Bunoro also signed the certificate of acknowledgement on 16.1.16 confirming that she has understood the explanatory memorandum relating to the adoption. A home was secured for the child at the Happy Life Children Home on 17.6.16 for temporary care and protection pending committal. On 21.9.16, the Children's Court at Nairobi *vide* Protection and Care Case Number xxx of 2016 formally committed the child to the same home, for a period of 3 years. On 3.2.2020, RB swore an affidavit consenting to the adoption. On the same day, FK, now an adult also swore an affidavit consenting to the adoption.
3. The Applicant was assessed by the Kenyans to Kenyans Peace Initiative (KKPI) Adoption Society, and was found to have met all the requisite legal and social requirements. KKPI in a report approved the Applicant as suitable and fit to adopt a child.
4. When the hearing of this matter commenced in Court on 16.12.21 MKK was appointed guardian *ad litem* for the child pending the hearing and determination of the adoption application, in accordance with Section 160 of the Children Act.
5. The Applicant has gone through the requisite assessments, and reports in respect thereof have been duly filed. The report by Kenyans to Kenyans Peace Initiative Adoption Society which arranged the adoption of the child was duly filed in Court. In compliance with Section 156 of the Children Act, Buckner Kenya Adoption Services by its certificate serial number xxxx declared the child free for adoption on 13.11.2020. For the Director of Children Services, was filed a report dated 19.1.22 by Ezekiel Kimani, the Assistant Director, Nairobi County Children Services and countersigned by Hoyd Isadia, Deputy Director, Children Services. For her part, MKK the guardian *ad litem*, filed her report dated 18.1.22. All these reports are favourable and recommend the adoption of the child by the Applicant.
6. It is noted that the Applicant is not younger than 25 years nor older than 65 years. She is more than 21 years older than the child. Section 158 of the Act has thus been complied with. The Applicant has been made aware of the consequences of an adoption order as well as the rights of an adopted child. She shall assume all parental rights and duties of the biological parents in respect of the child. I am satisfied that she fully understands that the adoption order is final and binding during the lifetime of the child and that the child shall have the right to inherit her property. The Applicant cannot under any circumstances give up the child. The Applicant has demonstrated that she has the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment. She proposes to name

the child GOJ.

7. The Applicant is married to JM holder of Nigerian passport no. Axxxxxxx who swore and affidavit on 27.9.21, consenting to the Applicant's adoption of the child.

8. The Applicant has nominated her brother DGN and his wife SMG to be the legal guardians of the child, in the event of the Applicant dying or becoming incapacitated before the child is of full age. The Court DGN and is satisfied as to his and his wife's readiness, willingness and ability to be legal guardians of the child.

9. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interests of the child that she be adopted by the Applicant. The Court makes the following Orders as prayed in the Originating Summons herein:

a. The Applicant TKE, holder of national identity card number xxxx is hereby allowed to adopt Baby J, who shall henceforth be known as GOJ.

b. I direct the Registrar General to enter this order in the Adoption Register.

c. DGN holder of national identity card number xxxxxxx and his wife SMG holder of national identity card number xxxxxxx are hereby appointed legal guardians of the child in the event that the Applicant dies or is otherwise incapacitated before the child attains the age of 18 years.

d. The appointment of MKK, the guardian *ad litem* now stands expired.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2022**

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**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Applicant**

..... **Court Assistant**