



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

ADOPTION CAUSE NO. E011 OF 2021

IN THE MATTER OF THE CHILDREN'S ACT 2001

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF MMW (THE CHILD)

BY

JMKAND WWW(APPLICANTS)

JUDGMENT

1. The Applicants JMK and WWWare in a monogamous marriage which was solemnized at the St Marks Church Westlands on 4th October 2012 as evinced in their certificate of marriage serial number xxxxxx. The couple has one biological child named AN born on 28th April 2007. They wish to adopt a male child known as MMW through the Originating Summons dated 20th January 2021. The 2nd Applicant is the biological aunt of the child.

2. From the pleadings the court gathers that the Applicants are well able to provide for an extra member of the family. The 1st Applicant is an architect and the CEO at H Limited while the 2nd Applicant works as a teacher at [Particulars Withheld] School. The Applicants live in Kilimani area, within Nairobi County and both profess the Christian Faith.

3. The record before the court indicates that the child in this matter was born on 1st October 2014 as evinced by his birth certificate serial No. xxxxxxx. The child was opharmed following the death of his father on 15th January 2015 and subsequent death of his mother on 28th September 2018 as evinced by their respective certificates of death. The Applicants took the child by and have been providing financial and parental responsibility over him since then.

4. Prior to the hearing of the adoption application, Change Trust Adoption Society issued a certificate serial number xxxxx dated 13th September 2019, declaring the child free for adoption. The court appointed guardian ad litem, PNM, filed a report dated 20th August 2021, which was favourable and recommended the adoption of the child by the Applicants.

5. An officer from the office of the Director of Children Services conducted home visits and established that the Applicants are financially and emotionally capable of providing for the upkeep and education of the child. He filed a report dated 2nd August 2021, recommending the adoption for reasons that the child stands to benefit from the oportunities provided by becoming a child of the Applicants. That he will gain a family and grow up in a stable home. The child will also gain a sibling. The Applicants were found to have fulfilled the statutory requirements for adoption.

6. **Article 53(2)** of the Constitution, provides the overarching principle which must apply whenever any decision concerning a child is to be considered. It provides that:

“A child’s best interests are of paramount importance in every matter concerning the child.”

This constitutional and internationally applicable principle is embedded and amplified in the Children’s Act No.8 of 2001, particularly at **Section 4(3)** of the Act.

7. The circumstances of this case is that it is a kinship adoption, the second Applicant being an aunt to the child. Under the guidelines for Alternative Family Care of Children in Kenya at page 153, kinship adoption is defined as adoption by adopters who are kin or relatives within the extended family of the child.

8. This is a local adoption and from the record the Applicants have fulfilled all the legal requirements relating to the adoption of the child. JMK was born on 15th March 1970 and is aged 51 years while WWW was born on 15th July 1970 and is also 51 years old. They are therefore within the age bracket eligible to adopt, being adults and having attained the age of twenty-five years and are at least 21 years older than the child but have not attained the age of sixty-five years as provided by **Section 158(1)** of the Children’s Act No. 8 of 2011. The Applicants also meet the social parameters that are considered relevant for them to take on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought.

9. It is noteworthy that the Applicants’ biological son gave his consent dated 29th July 2021, for his parents to adopt the child. Upon consideration of the circumstances, I am satisfied that it would be in the interest of the child to be adopted by the Applicants. Not only does the child gain a warm family but also maintains kinship ties with his relatives.

10. Reasons wherefore I allow the prayers sought in the Originating Summons dated 20th January 2021 and order as follows;

- i. The Applicants JMK and WWW be and are hereby allowed to adopt Baby MMW who shall henceforth be known as MMK.
- ii. His date of birth is 1st October 2014 as evinced in his birth certificate serial No. xxxxxxxx and he is presumed to have been born in Kenya in accordance with **Article 14(4)** of the Constitution of Kenya and his place of birth shall be Nairobi.
- iii. ANN and NWM are hereby appointed as legal guardians in the event that the Applicants die, or are incapacitated by ill health.
- iv. The Registrar General is directed to enter this order in the Adopted Children’s Register.
- v. The Director of Immigration is hereby authorized to issue the child with a Kenyan Passport.
- vi. The guardian ad litem be and is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 24TH DAY OF FEBRUARY, 2022

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L.A. ACHODE

HIGH COURT JUDGE