



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**ADOPTION NO. 17 OF 2018**

**IN THE MATTER OF THE CHILDREN'S ACT 2001**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY SW (THE CHILD)**

**BY**

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

**AND**

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

**JUDGMENT**

1. The applicants **PMK** and **JMM** are husband and wife. They are 55 and 50 years respectively. They got married in 2001 at the office of the Attorney General. They seek by their Originating Summon Application to adopt baby **SW**. The applicants previously adopted another child in the year 2012.
2. Baby **SW**. was born on 29<sup>th</sup> September 2011 at Kiambu District Hospital and abandoned at that hospital on the same date. A report was made to the Kiambu Police station and thereafter, the baby was admitted to **Happy life Children's Home**. On 31<sup>st</sup> May 2012. The police provided a letter stating that no claim had been made for the child and that attempts to trace the parents of the child had been futile.
3. The baby was declared free for adoption by **KKPI Adoption Society** on 6<sup>th</sup> June 2012.
4. On 8<sup>th</sup> June 2012, the child was placed under foster care of the applicants. The child has therefore been under the care of the applicants now for almost 10 years.
5. The court appointed the *guardian ad Litem* on 27<sup>th</sup> May 2021. The *guardian ad Litem* filed a report dated 31<sup>st</sup> May 2021. The report reveals that the baby is healthy, has bonded well with the prospective adoptive parents, the applicants, and her adopted sibling. The guardian also notes that the child has developed a good relationship with the extended family, especially the grandparents.
6. The **Director of Children Services** similarly observed, by the report dated 19<sup>th</sup> February 2019, that the child has bonded well with the applicants and her brother and that the child's performance in school is exemplary. The officer recommended the adoption of the child by the applicants by stating that it will be in the best interest of the child.
7. The parent/guardian of the baby, if any is unknown, and all attempts to trace them has been unsuccessful. An adoption application requires that it be accompanied by a consent, amongst other requirements, of the parent/guardian: see **Section 158 (4)** of the **Children's Act** (hereafter the Act). Having considered the background information set out above I am of the view that this is a case where this court can dispense with the requirement for such a parent/guardian to give their consent to this adoption. Such dispensation is provided for under **Section 159 (1) (c)** of the Act, as follows:

***(1) The court may dispense with any consent required under paragraphs (a), (b), and (c) of subsection (4) of section 158 if it is satisfied that: -***

(a) . . .

(b) . . .

(c) *in any case, except in respect of the consents required under paragraphs (e) and (f) of subsection (4) of section 158 that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent has been unreasonably withheld.*

8. This court does hereby dispense with the requirement of the consent of the parent/guardian of the child.

9. From the above, I find that the applicants have fulfilled the legal requirements necessary for the making of an adoption order. The applicants are aware of her responsibility in adopting the child and the consequences of making such an order.

10. The reports presented to the court reveal the applicants have demonstrated their ability to take care of the child. They understand their responsibility in adopting the child.

11. This is a local adoption and in the court's view, the legal requirements under the Children's Act have been met by the applicants.

#### **DISPOSITION**

12. Considering the above finding the court makes the following orders:

- a. **Baby SW** shall be presumed a Kenyan Citizen by Birth and the Director of Immigration is hereby authorized to issue the child with a Kenyan passport.
- b. The applicants **PMK** and **JMM** are hereby authorized to adopt **baby SW** who shall hereafter be known as **FWM**
- c. **GKM** and **MM**. are hereby appointed legal guardians of **FWM**.
- d. The Registrar General is hereby ordered to make appropriate entries in the Adopted Children's Register in respect to **baby FWM**
- e. The consent of the biological parent/s or guardian is hereby dispensed with.

**JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 21ST DAY OF FEBRUARY, 2022**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: - Mourice

For the applicants: N/A

**COURT**

JUDGMENT *delivered virtually.*

**MARY KASANGO**

**JUDGE**