



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**ADOPTION CAUSE NO. 10 OF 2020**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF (MINOR) BABY DNK**

**ENN.....APPLICANT**

**JUDGMENT**

1. The Originating Summons before me is dated 24<sup>th</sup> June, 2020. It is expressed to be brought under Sections 157 and 160 and all other enabling provisions of the Children's Act. The Applicant is ENN ("Applicant"). It seeks orders:

1) – Spent-

2) – Spent-

3) *That the Consent of the biological parents of Baby DNK be dispensed with.*

4) *That the Applicants herein be authorized to adopt Baby DNK and the child be called the same henceforth.*

5) *That the child be presumed to be a Kenyan citizen by birth.*

6) *That the Registrar-General do make the appropriate entries in the Adopted Children's Register in respect of Baby DNK.*

7) *That the Court does issue such other orders as may be necessary in the best interests of the child.*

2. The Summons is supported by a statement and affidavit by the Applicant. The Court directed that the Children's department do investigations and file a report. A report was duly filed in Court. It is dated 20/09/2021. The Court also appointed Guardians *ad Litem* to investigate and file a report. JGN and JWM, the Guardians *ad Litem*, have also filed a report dated 29/03/2021.

3. The Minor was born at Mama Lucy Hospital in Nairobi. The Minor was born by C-Section. Unfortunately, the biological mother, AWN, never woke up after the C-section due to complications. The biological father of the Minor is not known and was thus, not listed, in the Birth Certificate.

4. Immediately after birth, the Applicant, a sister to the deceased biological mother, became the adoptive mother. With the consent and approval from the rest of the family, the Applicant took in the Minor and has raised him as her own child.

5. The Minor was declared free for adoption on 13/05/2020 by the Kenya Children's Home Adoption Society, Freeing Certificate Serial No. 1572.

6. The Applicant is a Kenyan citizen. The Applicant is formally married to TK. They separated in 2014. TK has consented to the adoption even though both he and the Applicant do not foresee them getting together again. Indeed, TK has now remarried. This is, therefore, an adoption by a single parent.

7. The Applicant is a business-woman. She runs a general shop at [Particulars Withheld] and also runs a pay-per-use toilet in [Particulars Withheld]. She presented evidence of her ability to take care of the child. Indeed, she has two other children – aged 11 and 7. In letters attached to the Application, both indicated excitement that they now have a baby brother. They live in her own house in Nakuru County. The Applicant attached copies of her bank statements.

8. The Applicant attached a copy of Certificate of Good Conduct showing that she has never been convicted of any criminal offence. All the information placed before me demonstrates that the Applicant is an emotionally and financially stable individual who is fit to take the parental responsibility to the minor.

9. The Applicant was investigated by the Kenya Children's Home Adoption Society and found to be fit as an adoptive parent. A copy of the Pre-Placement Report was annexed.

10. Both the report by the Guardian *ad litem* and the County Children's Coordinator were duly filed. They are quite favourable to the Applicant and highly recommend the adoption.

11. The minor has been in the care and protection of the Applicant since he was one day old in 2016. Both the Guardian *ad litem* and the County Children's Coordinator report that the child has bonded very well with the Applicant and that the Minor identifies her as his mother.

12. The Applicant wishes to have SN, her brother, as the Legal Guardian of the minor. SN appeared before me and confirmed that he has consented to this appointment. He also filed an affidavit indicating such consent.

13. The Applicant, the Guardians *ad litem* and the Legal Guardian appeared before me and satisfactorily answered questions posed by the Court.

14. The primary consideration in an adoption Application is whether the Applicant has fulfilled all the pre-requisites to be granted the Adoption Orders. These are mainly found in Sections 158 and 163 of the Children Act. I have now carefully read all the documents filed in the case. I have confirmed that all the reports and consents needed are on file. The minor is free for adoption and Kenya Children's Home, an authorized adoption society, has issued a Certificate to that effect. The only known biological parent of the minor is deceased. The consents of the proposed Legal Guardian and the Applicants are on record.

15. In addition, I have read the report filed by the County Coordinator of Children Services as well as the report by the Guardians *Ad Litem* and the Adoption Society. All reports are unanimous that it will be in the best interests of the minor for the Court to grant the Adoption Orders. I see no reason to dissent from those views. I am satisfied that the Applicant meets all the attributes required of Applicants in Section 158 of the Children Act. I am also satisfied that the Applicant understand the consequences and import of Adoption Orders. Finally, I am satisfied that it is in the best interests of the minor for the Adoption Orders to be given.

16. Having considered all the evidence, perused all the documents I am persuaded that the Applicant is a fit adoptive parent who will provide a suitable home and parentage for the minor herein. Consequently, I allow the Originating Summons and grant the following prayers:

**i. THAT the Applicant be and is hereby authorized to adopt DNK and the child shall be known as by the same name henceforth.**

**ii. THAT DNK be and is hereby presumed to be a Kenyan citizen having been found in Kenya at the time of his birth.**

**iii. THAT the Registrar-General do make appropriate entries in the adopted children's register in respect of the minor, DNK.**

**iv. THAT SN be and is hereby appointed Legal Guardian to the minor herein.**

**v. THAT the Guardians *ad Litem* are discharged.**

14. Orders accordingly.

**DATED AND DELIVERED IN NAKURU THIS 31<sup>ST</sup> DAY OF MARCH, 2022**

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**JOEL NGUGI**

**JUDGE**