



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIVASHA

ADOPTION CAUSE NO. 1 OF 2020

IN THE MATTER OF THE CHILDREN ACT (Act No. 8 of 2001)

AND

IN THE MATTER OF THE ADOPTION OF JK aka JK

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

GGM.....1ST APPLICANT

MWK.....2ND APPLICANT

J U D G M E N T

1. This is a straight forward application for adoption of a child, now thirteen years old, who has presumably born in 2007.
2. The child was found wandering along River road in Nairobi, and was taken to the Kamukunji Police Station on 14th August 2009 by a Good Samaritan. The police recorded the incident in OB No. XXXXX/2009. The child was committed to the care of Imani Children's Home for three (3) years by the Children's Court, Nairobi, on 24th May, 2020 vide **Care and Protection Case Number 271 of 2009**. The committal period was extended upon request of the Children Officer, Embakasi Sub-County for a further three (3) years on 16th August, 2016.
3. According to a letter dated 28th September, 2017, by Kamukunji Police Station no one has ever come forward to claim the child despite the child being put in the press. The child has all along been at Imani Children's Home since committal.
4. The applicants' application herein was made in the form prescribed under the Children Act. This was after they had the opportunity to care for the child since 2018, and have been with her as their own child, even educating her.
5. The pre-requisites for adoption under **Section 156 (1)** of the **Children Act** were complied with. In particular, the child was declared free for adoption by Buckner Kenya Adoption Service vide Certificate of Declaring a Child Free for Adoption No. XXXX, on 29th September 2017 when the child was ten years old.
6. **Section 157 (1)** of the Act has been complied with in that the child was found abandoned and resident in Kenya aged about two years at the time of being found. Further the child has been in the continuous care and control of the applicants for a period of over three (3) consecutive months preceding the filing of the application as they took custody of the child pursuant to a Care Agreement dated 2nd September, 2018 between them and Imani Children's Home, where the child had been committed by the Children's Court.
7. Further, the proviso to **Section 157 (1)** of the **Children Act** has been complied with in that both the child and the applicants were evaluated and assessed by Buckner Kenya Adoption Services as shown in their declaration Report filed on 14th September, 2020 and dated 27th April, 2018. The report recommended:-

“The child has bonded well with the parents and the older siblings. She is settled and loves her family. The family has been

taking good care of her.

We therefore recommend that the applicants be granted the Adoption orders; it will be in the best interest of the child.”

The Case Committee of the adoption service gave its approval in the following terms:

“The Buckner Kenya Adoption Services Committee sitting on 27th April, 2018 assessed this application and was satisfied that the applicants are suitable to adopt a child of their preferred age and sex.”

8. The applicants have further complied with **Section 158** of the **Children Act** in that:

- the applicants are both over twenty (25) years old and less than sixty five (65) years old.
- they are not relatives of the child or a mother or a father of the child.
- they are both of sound mind; and have not been charged and convicted of any of the offences set out in the Third Schedule of the Act, or similar offences.
- they are joint applicants duly married, and therefore not homosexual.
- all the reports and evaluations done indicate that it is in the best interests of the child that they adopt her as demonstrated by the fact that they have been amicably living with and educating the child.
- that the child has given her consent to being adopted by the applicants.
- That the child, having been abandoned, and no parent or guardian having been traced despite advertisements in the media, is presumed to have been legally abandoned.

9. The applicants duly applied for adoption, and the court appointed Jackson Ndegwa as the guardian ad litem. In his report, the guardian ad litem made the following recommendation:

“In my view Mr. G and Mrs. Mi are competent parents. They love J and I could hardly tell their treatment of the child and their own biological children apart. They are fair to all the children.

I therefore recommend that this Court allows the applicants to be the parents to this child.”

10. In light of all the foregoing, the Court is of the view that the best interest of the child will be served by issuance of an order of her adoption to and by the applicants. .

11. Accordingly, the court orders as follows:

- i. That applicants, GGM and MWK are hereby authorized
- ii. The child shall be and is hereby renamed as JWG.
- iii. The child’s date of birth is hereby declared to be 14th August, 2007, and her place of birth is hereby declared to be Nairobi County.
- iv. The child is deemed to be a Kenyan Citizen by birth.
- v. The consent of the child’s biological parents or guardians who have neither been traced nor stepped up is hereby dispensed with.
- vi. The child’s consent to her adoption by the applicants, by virtue of her signed letter dated 6th February 2020 and filed on 14th December, 2020, is hereby accepted and recorded pursuant to Section 158 (4) (f) of the Children Act.
- vii. The guardian ad litem, JN, is hereby discharged and EWG is hereby appointed as the Legal Guardian of the child in the event that the applicants are incapacitated or in any way unable to discharge their parental obligations.
- viii. That the Registrar General is hereby directed to make the appropriate entries in the Adopted Children Register.
- ix. That there are no orders as to costs.

Administrative directions

12. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Teams tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

13. A printout of the parties’ written consent to the delivery of this judgment shall be retained as part of the record of the Court.

14. Orders accordingly.

Dated and Delivered in Naivasha by teleconference this 22nd Day of February, 2021.

R. MWONGO

JUDGE

Attendance list at video/teleconference:

1. Ms Kimenyi for the Applicants

2. Court Assistant - Quinter Ogutu