



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**ADOPTION CAUSE NO. 18 OF 2020 (OS)**  
**IN THE MATTER OF THE CHILDREN'S ACT 2001**  
**IN THE MATTER OF EM (THE CHILD)**  
**AND**  
**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY SKM**  
**JUDGMENT**

1. SKM, the Applicant, has come to this court through Originating Summons dated 24<sup>th</sup> January 2020 basing the application on Sections 158, 159, 160, 163, 164 and 169 of the Children Act Chapter 21 Laws of Kenya. She is seeking the following orders:

- (i) THAT the Applicant be authorized to adopt the child EM who is a Kenyan citizen, born on 12<sup>th</sup> day of January 2006.
- (ii) THAT the consent of the father of the minor be dispensed with pursuant to section 159(1) (a) and (b) of the Children's Act.
- (iii) THAT upon adoption, the child shall continue to be known as EM.
- (iv) THAT LM of Kenyan Identity Card Number [...] be appointed as the legal guardian of the child EM.
- (v) THAT the Registrar General be directed to enter this adoption into the Register of Adoptions.
- (vi) THAT the Director of Immigration be authorized to issue the child EM with Kenyan passport.

2. In support of the Originating Summons, the Applicant has filed a Statement explaining the history of the child and the reasons behind her desire to adopt the child. She has also filed several documents in support of this application including consents from the grandmother of the child under whose care the child has been; from the proposed legal guardians; from her husband; from the child and from her siblings. There are also reports from the Department of Children Services and Guardian Ad Litem and the certificate declaring the child free for adoption from the Kenya Children's Homes Adoption Society.

3. I have read the entire file and acquainted myself with the pleadings and all the attached documents.

4. The Applicant is a Kenyan citizen. She was born on 22<sup>nd</sup> March 1986 according to her birth certificate attached to these pleadings. She is married to KMM. A marriage certificate to that effect is attached. They have one biological child CM born on 15<sup>th</sup> June 2018. The Applicant resides in the State of North Carolina at [particulars withheld] United States of America. Her husband holds dual citizenship of the Republic of Kenya and United States of America. He has consented to the Applicant's application to adopt the child.

5. The Applicant is a Nursing Assistant at [Particulars Withheld] Hospital in Seattle. She has attached bank statements and title deed to demonstrate that she is financially capable of taking care of the child. She states that her motivation to adopt the child is her desire to secure the future for the child.

6. This is a kinship adoption. The child's mother, LM, now deceased, was sister to the Applicant. The child is therefore her niece. The child's mother LM was unmarried. She did not disclose who the father of the child was and the whereabouts of the biological father of the child is unknown. The child was born on 12<sup>th</sup> January 2006. She has been under the guardianship of her grandmother CMM who is also the mother of the Applicant. CMM has given her consent to have her grand-daughter adopted by the Applicant. The consent is contained in an affidavit she swore on 11<sup>th</sup> January 2020. In it she deposes that the adoption is in the best interest of the child given that the Applicant is young and

capable of bringing up the child and guiding her in life and given that she, CMM, is elderly and may not give the child the best life.

7. The Applicant has been cleared by the police from any criminal record through a certificate dated 6<sup>th</sup> September 2019. She has also been examined by a medical practitioner through and found mentally and physically fit to adopt the child.

8. The Applicant has obtained consents from the child herself and from her siblings LM, AM, AM, and VN in addition to those from her husband and her mother.

9. This court (Machelule, J) appointed FNK as Guardian Ad Litem upon application by the Applicant. The court directed that the Guardian Ad Litem and the Director Department Children Services investigate the suitability of the Applicant to adopt the child. They were required to file their respective reports within 45 days. I have confirmed that both reports have been filed.

10. The Guardian Ad Litem report is dated 14<sup>th</sup> December 2020. The Guardian Ad Litem states in that report that she has known the Applicant for 15 years, has interacted with her socially and has visited her home. She states that she found the child well settled and very attached to the Applicant with whom she has developed an excellent relationship. She states that the Applicant has demonstrated great parental skills that have greatly benefited the child. She states that the Applicant is emotionally, psychologically and economically ready to take care of the child. She states that the Applicant is fully committed to the child and that both have bonded well. She recommends that the Applicant be allowed to adopt the child.

11. The report from the Children Services is dated 30<sup>th</sup> November 2020. It is prepared by Ezekiel Kimani, Chief Children Officer, Nairobi and countersigned by Mary Mbugua, Assistant Director on behalf of the Director Children Services. The report speaks well of the Applicant and her capability to adopt the child. It so recommends.

12. Section 158 of the Children Act (No. 8 of 2001) provides that an adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants:

(a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or

(b) is a relative of the child; or

(c) is the mother or father of the child.

13. The Applicant satisfies (a) and (b) of this Section. Besides, she is a blood relation to the child by virtue of being her aunt.

14. The Applicant has proposed LM of identity card number xxxxxxxx as legal guardian. LM is also sister to the Applicant. LM has consented to being appointed Legal Guardian vide her affidavit sworn on 24<sup>th</sup> January 2020. She has also signed a Guardianship confirmation dated 9<sup>th</sup> November 2019.

15. I have considered this matter and I am satisfied that the law and procedure has been followed. The child has been declared free for adoption by the Kenya Children's Home Adoption Society vide Certificate of declaring a child free for adoption issued on 18<sup>th</sup> December 2019. The necessary consents from CMM grandmother of the child who has been taking care of the child, Applicant's husband, her sisters and brothers and the child herself have been obtained. I am satisfied that all the consenting persons understand the nature and effect of the adoption order sought and that it is in the best interest of the child.

16. The child's wishes to be adopted by her aunt the Applicant have been taken into account. I am satisfied that it would be in the best interest of the child to allow this application, I do so and grant an adoption order as follow:

**(a) THAT the Applicant SMM be and is hereby authorized to adopt the child, EM, who is a Kenyan citizen born on 12<sup>th</sup> January 2006.**

**(b) THAT the consent of the biological father of EM be and is hereby dispensed with pursuant to Section 159 (1) (a) and (c) of the Children Act.**

**(c) THAT the child shall retain the name EM.**

**(d) THAT LM of Kenyan National Identity Card No. [...] be and is hereby appointed as legal guardian of the child EM.**

**(e) THAT the Registrar General be and is hereby directed to enter this adoption into the Register of Adoptions.**

**(f) THAT the Director of Immigration be and is hereby authorized to issue the child EM with a Kenyan passport.**

**(g) THAT FNK, is hereby discharged from being Guardian Ad Litem of the child EM.**

Orders shall issue accordingly.

**Dated, signed and delivered on 22<sup>ND</sup> April 2021.**

**S. N. Mutuku**

**Judge**