



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. 179 OF 2019 (OS)**

**AND**

**IN THE MATTER OF THE CHILDREN'S ACT (NO. 8 OF 2001)**

**AND**

**IN THE MATTER OF BABY AM**

**AND**

**AN APPLICATION FOR ORDERS OF ADOPTION OF BABY AM**

**BY**

**SMS**

**JUDGEMENT**

1. By the Originating Summons dated 19.12.19, the Applicant SMS seeks to adopt a child known as Baby AM. The Applicant is a divorcee with no children of her own. She had been married to one EN but the marriage was dissolved on 30.4.15 and a decree absolute in respect thereof issued on 30.1.17. Following assessment by Little Angels Network Adoption Society, the Applicant was found to have met all the requisite legal and social requirements. The case committee sitting on 3.4.19 did approve the Applicant as suitable and fit to adopt a female child.

2. Baby AM who is estimated to have been born on 4.1.12 was found abandoned at [Particulars Withheld] market by a night guard on 5.5.12 at around 8.30 pm. He rescued the child and reported the matter at Kombewa Police Station vide Occurrence Book Number [xxxx]. The Kisumu West District Children's office secured a place for the child at New Life Home Trust Kisumu for temporary care and protection pending committal. The Children's Court at Maseno did on 29.3.12 *vide* Protection and Care Case Number 3 of 2012 formally commit the child to New Life Home Trust for a period of 3 years or until further orders of the Court. Kombewa Police Station in a final letter dated 10.7.12 confirmed that since the child was reported abandoned on 5.1.12, no one had come forward to claim her.

3. This Court did on 25.6.2020 did appoint LO as guardian *ad litem* for the child pending the hearing and determination of the adoption application, in accordance with Rule 8 of the Adoption Rules.

4. The Applicant has gone through the requisite assessments, and reports in respect thereof have been duly filed. The report by Little Angels Network which arranged the adoption of the child was duly filed in Court. In compliance with Section 156 of the Children Act, Little Angels Network by its certificate serial number [xxxxx] declared the child free for adoption on 1.8.12. For the Director of Children Services, Mary Atati, the Principal Children's Officer filed a report dated 21.9.2020 which was countersigned by Mary Imbuga, Assistant Director, Children Services. For her part, LO the guardian *ad litem*, filed her report dated 23.7.2020. All these reports are favourable and recommend the adoption of the child by the Applicant.

5. I note that the child has been in continuous care and control of the Applicant for a period of about 9 years which is more than the statutory 3 months required under Section 157 of the Act. The Applicant is not younger than 25 years nor older than 65 years. She is more than 21 years older than the child. Section 158 of the Act has thus been complied with. The Applicant has been made aware of the consequences of an adoption order as well as the rights of an adopted child. She shall assume all parental rights and duties of the biological parents in respect of the child. I am satisfied that she fully understands that the adoption order is final and binding during the lifetime of the child and that the child shall have the right to inherit her property. The Applicant cannot under any circumstances give up the child. The Applicant has

demonstrated that she has the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment. From my observation in Court the child appears to have bonded well with the Applicant. She proposes to name the child LRS.

6. The Applicant has nominated her brother DMM and his wife EKA to be the legal guardian of the child, in the event of the Applicants dying or becoming incapacitated before the child is of full age. The Court examined the proposed legal guardians and is satisfied as to their readiness, willingness and ability to be legal guardian of the child.

7. The Applicant seeks that the Director of Immigration be authorised to issue the child with a Kenyan passport. This is an order that cannot be issued in these proceedings and the Court declines to grant the same. The Applicant is directed to make the requisite application to the Director of Immigration, for consideration.

8. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interests of the child that she be adopted by the Applicant. The Court is further satisfied that all the legal requirements for a local adoption have been met and makes the following Orders as prayed in the Originating Summons herein:

- a) The Applicant SMS, holder of national identity card number [xxxxxxx] is hereby allowed to adopt Baby AM, who shall henceforth be known as LRS.
- b) The child's date of birth is hereby declared to be 4.1.12.
- c) The Child is hereby declared to be a Kenyan citizen by birth.
- d) I direct the Registrar General to enter this order in the Adoption Register.
- e) DMM and his wife EKA are hereby appointed legal guardian of the child in the event that the Applicants die or are otherwise incapacitated before the child attains the age of 18 years.
- f) LO, the guardian *ad litem* is hereby discharged.

**DATED, SIGNED and DELIVERED at Nairobi this 31<sup>st</sup> day of May 2021**

**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Applicant**

..... **Court Assistant**