



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**ADOPTION CAUSE NO. 284 OF 2015**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES**

**AND**

**IN THE MATTER OF ADOPTION OF BABY GP (MINOR)**

**AND**

**IN THE MATTER OF AN APPLICATION OF ADOPTION BY**

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

**AND**

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

**JUDGMENT**

(1) Before this Court is the Originating Summons dated 20<sup>th</sup> November 2015 by which JGM (the 1<sup>st</sup> Applicant) and CWM (the 2<sup>nd</sup> Applicant) seek the following orders:-

**“1. THAT the Applicants JGM and CWM be and are hereby authorized to adopt BABY GP and the child be called KM henceforth.**

**2. THAT EKM be and is hereby appointed LEGAL GUARDIAN of the child in the event a misfortune befalls the applicants rendering them unavailable or incapable of taking care of the child.**

**3. THAT the REGISTRAR-GENERAL be and is hereby ordered to make the appropriate entries in the Adopted Children's Register in respect of KM.**

**4. THAT KM was born in Kenya and is presumed to be a Kenyan citizen by birth, and he is entitled to a Kenyan Passport.”**

(2) The Summons was supported by an Affidavit sworn by the two Applicants. The matter was disposed by way of viva voce evidence on the virtual platform.

(3) The Applicants are a Kenyan couple who got married to each other in **March 2007**. Their union was blessed with **one (1)** child a daughter who is now **seventeen (17) years** old. Due to medical issues the 2<sup>nd</sup> Applicant has not been able to bear another child. The Applicants have opted for adoption as a means to complete their family and to provide a companion for their only child. Additionally the Applicants view adoption as a way of giving back to Society by providing a needy child with a home.

(4) The Applicants both earn incomes which they state is sufficient to provide for the family and they reside in their own home in **Ruiru, Kiambu County**.

(5) The Applicants both state that they understand the legal implications of an adoption order and state that they will accord to the subject-

child all the rights due to a biological child including the right to inherit.

(6) **PW3 GRACE EKAMBI** represented the Adoption Agency. She confirmed that the Agency had filed its report recommending the adoption.

(7) **PW4 FMG** was the couples eldest daughter. She told the Court that she welcomed the decision of her parents to adopt a child.

#### **ANALYSIS AND DETERMINATION**

(8) I have carefully considered the evidence of the witnesses, as well as the Affidavits and Reports filed in this matter. **Section 159** of the **Children Act Cap 141, Laws of Kenya** provides for the Preliminaries required before an adoption order may be made as follows:-

**“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”**

(9) The subject-child who is estimated to have been born on **9<sup>th</sup> June 2012** was found abandoned inside a compound in **Jericho-Lumumba Area of Nairobi**. The child's Birth Certificate **Serial No. xxxxxxx** (Annexure **'9'**) to the Originating Summons gives his date of birth as **9<sup>th</sup> June 2012**. The child is therefore now aged about **nine (9) years old** well above the **six week** age limit provided for by law.

(10) The **Little Angels Network** which is a Registered Adoption Agency have declared the subject-child Free for Adoption vide their Certificate dated **27<sup>th</sup> August 2014**, Serial Number xxxxxxx. Accordingly I find that all the legal prerequisites for Adoption have been met.

(11) The duty of this Court is to assess and determine whether the Applicants are suitable adoptive parents for the child. The Applicants are both Kenyan citizens, as evidenced by the copies of their National Identity Cards annexed to the Summons (Annexures **1(a)** and **1(b)**). The Applicants have been in a stable marital union for the past **seventeen (17) years** having solemnized their union at the **Father's House Family Church** on **24<sup>th</sup> March 2007**. They have annexed to the Summons a copy of their Marriage Certificate Serial Number xxxxxxx (Annexure **'2'**).

(12) The Applicants are both in business and have a Hardware shop which they run together. They also own rental properties on a plot they have developed in **Ruiru** and own a **Nissan vehicle** which they use for domestic and business purposes. From their business and rentals the Applicants derive a monthly income of approximately **Kshs. 60,000/-**. This is sufficient to provide for the needs of their family. The Applicants have annexed a statement from **Unaitas Sacco** in **Juja** as evidence of their financial stability (Annexure **'8'**).

(13) The Applicants are in good physical and mental health. They have annexed copies of their medical evaluations conducted on **16<sup>th</sup> January 2019** by a **Dr. Muriuki** (Annexures **6(a)** and **6(b)**). Both Applicants have annexed a copy of their Police Clearance Certificates issued by the **National Police Service**. (Annexure **7(a)** and **7(b)**) indicating that neither has a criminal record.

(14) The Applicants informed the Court that their respective families accept and welcome their decision to adopt. They have appointed as Legal Guardian for the child the sister of the 1<sup>st</sup> Applicant **EKM**. The Legal Guardian signed a consent dated **17<sup>th</sup> January 2014** (Annexure **'4'**). All in all from the evidence and material presented before this Court I am satisfied that the Applicants are suitable adoptive parents.

(15) The subject-child was found abandoned within a compound in **Jericho-Lumumba** area of **Nairobi County**. Members of public passing by heard the persistent cries of the baby and rescued him. The matter was reported at **Buru Buru Police Station** vide OB No. **67** of **9<sup>th</sup> August 2012**. Thereafter on **19<sup>th</sup> April 2013** the **Nairobi Childrens Court** committed the child to **Imani Childrens Home** for Care and Protection. On **14<sup>th</sup> September 2014** the child was placed into the custody of the Applicants under a Foster Care Arrangement.

(16) **Article 14** of the **Constitution of Kenya, 2010** deals with the question of **Citizenship**. **Article 14(4)** provides as follows:-

**“(4) A child found in Kenya who is, or appears to be, less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”**

(17) The subject-child was found abandoned in the Republic of Kenya aged about **2 months old**. The child having been found abandoned in Kenya is deemed to be a Kenyan citizen by birth and I so declare.

(18) In deciding upon any matter involving a child Courts are obliged to give priority to the best interests of the said child. **Section 4(2)** of the **Children Act** provides:-

**“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. [own emphasis]**

(19) This is a child who was abandoned shortly after his birth. To date almost **ten years** after the said abandonment no person has come forward to claim the child. Efforts made by Police to trace the child's parents / relatives have borne no fruit. The Final Police letter dated **18<sup>th</sup> February 2013** is evidence of this (Annexure **'12'**).

(20) The child faced an uncertain future being raised in Childrens Homes and Institutions. This Adoption provides him with the opportunity to be raised in a stable loving home environment. The child has lived with the Applicants in their home since **September 2014** a period of about **seven (7) years**. I have no doubt that he has bonded with the family. The Applicants are the only parents the child knows.

(21) The Applicants elder daughter testified in Court. She consented to the Adoption indicating that she had already welcomed the child and views him as her younger brother. A home visit conducted by the **Directorate of Childrens Services** revealed that the Applicants owned their own home in **Ruiru**. The home was within a gated community, was spacious and was suitable for raising a young child. The Applicants had however temporarily re-located to live in **Juja** due to concerns about insecurity in **Ruiru Town**.

(22) I have perused the reports filed by the **Guardian ad Litem** and the **Directorate of Childrens Services**. Both reports are favourable and recommend the adoption. On the whole I find that this adoption certainly serves the best interests of the child.

(23) Finally I do allow this Originating Summons and I make the following orders:-

- 1) The Applicants **JGM** and **CWM** are authorized to adopt the child known as **'BABY GP.'**
- 2) Upon adoption the child will be known as **KM**.
- 3) **EKM** is appointed as the Legal Guardian for the child.
- 4) The child is declared to be a Kenyan citizen by birth.
- 5) The Registrar-General is directed to make the relevant entry in the Adopted Children's Register.

**DATED IN NAIROBI THIS 25TH DAY OF JUNE, 2021.**

.....

**MAUREEN A. ODERO**

**JUDGE**