



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. E022 OF 2021**  
**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES**  
**AND**  
**IN THE MATTER OF BABY JW**  
**AND**  
**IN THE MATTER OF AN APPLICATION FOR ADOPTION**  
**BY**  
**MWG ....APPLICANT**  
**JUDGMENT**

1. Before this Court is the Originating Summons dated **16<sup>th</sup> March 2021** in which the Applicant seeks inter alia the following orders:-

- 4. THAT this Honourable Court declares BABY JW a Kenyan citizen.**
- 5. THAT the Applicant MWG be authorized to adopt BABY JW (the infant).**
- 6. THAT the Applicant MWG be declared the Guardian of BABY JW.**
- 7. THAT the names of the said infant be changed from BABY JW to JMW upon issuance of the orders.**
- 8. THAT the Registrar General makes the appropriate entries in the Adopted Childrens Register.**
- 9. SPENT**
- 10. THAT BABY JW be issued with a Birth Certificate in the name of JMW, date of birth being 2<sup>nd</sup> February 2016.**

2. The Summons was supported by the Statement of the applicant as well as the Further Affidavit dated **18<sup>th</sup> June 2021**. The Summons was canvassed by way of viva voce evidence on the online platform.

3. The Applicant **MWG** told the Court that she works as a Deputy Registrar at **[Particulars withheld] University**. She stated that she has never been married and has no biological child of her own. However the Applicant does have an Adopted daughter who is now aged **ten (10) years**.

4. The Applicant stated that she wishes to adopt the subject child due to her desire to provide a needy child with a home. She also wishes to provide her other adopted daughter with a sibling. The Applicant confirmed that she fully understood the legal implications of an Adoption order. She undertook to accord to the subject child all the rights due to a biological child. She stated that her extended family are aware of and fully support her intention to adopt a second child.

5. PW3 NWT was the **Guardian Ad Litem**. She filed in Court her Report dated **24<sup>th</sup> May 2021**.

6. PW4 FRANCIS NDELEKA is the representative of the Adoption Agency **Child Welfare Society of Kenya ('CWSK')**. He confirms that the Agency had filed in Court its report dated **10<sup>th</sup> December 2020**, recommending the Adoption.

7. PW5 EZEKIEL KIMANI is the representative of the **Directorate of Childrens Services ('DCS')**. He confirms that they have filed the Report dated **5<sup>th</sup> July 2021**, recommending the Adoption.

#### **ANALYSIS AND DETERMINATION**

8. I have considered the evidence adduced in open Court as well as the various Affidavits and Reports filed in this matter. The Preliminary requirements for the making of an Adoption Order are set out in **Section 156(1)** of the **Children's Act** which provides 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 was born on **2<sup>nd</sup> February 2016** and as such is now aged **5<sup>1/2</sup> years old**. Thus the child is above the **six (6) week** age limit provided for in the **Children Act**. **CWSK** which is a Registered Adoption Agency have annexed to their Report dated **10<sup>th</sup> December 2020**, their Certificate Serial Number [xxxx] dated **6<sup>th</sup> September 2018** declaring the child Free for Adoption. Accordingly I am satisfied that all the legal prerequisites for an Adoption order have been met.

10. The duty of this Court is to evaluate the material placed before it to determine whether the Applicant is a suitable Adoptive Parent. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identity Card which is annexed to the Summons (Annexure 'MWG-2'). The Applicant has never been married and has no biological children of her own. However the Applicant does have a **ten (10) year old** daughter named **RGW** whom she adopted in the year **2016**. A copy of the Adoption Order in respect of this child issued by the **High Court of Kenya** on **20<sup>th</sup> June 2016** is included in the Report of the Adoption Agency. It is evident that the applicant is not new to adoption and has demonstrated by action her love for children by opening her heart and her home to needy children.

11. The Applicant currently works as a **Deputy Registrar** at the [**Particulars withheld**] **University**. She earns a salary of approximately **Kshs. 80,000/-** monthly. Additionally the applicant owns rental units in **Kikuyu Town** from which she derives a monthly income of approximately **Kshs. 200,000/-** which rental income supplements her salary. I am satisfied that the Applicant is financially secure and is well positioned to provide for the needs of the two children.

12. The Applicant is a Christian and worships at [**particulars withheld**] **Church**. She intends to raise the child in the Christian faith. She has appointed **AGG** and **MNG** as Legal Guardians for the child in the event that she is unable or unavailable to provide for the child. Annexed to the Further Affidavit dated **18<sup>th</sup> June 2021** is a copy of a **Clearance Certificate** issued to the Applicant by the **Directorate of Criminal Investigations**. This is proof that the Applicant has no criminal antecedents.

13. From the material availed to this Court I am satisfied that the Applicant is a suitable Adoptive parent.

14. The subject child was born on **2<sup>nd</sup> February 2016** at the **Kiambu District Hospital** as evidenced by the copy of **Notification of Birth** Serial Number [...] which is annexed to the Report of the Adoption Agency. The child's biological mother one **JW** immediately indicated her intention to give up the child for adoption stating that the pregnancy was unplanned and was unwanted. The hospital authorities then called in the **CWSK** who counseled the mother but she remained adamant about her intention to give up the child for adoption. **CWSK** then rescued the child and took her into their custody. Thereafter on **29<sup>th</sup> June 2016** the **Nairobi Children's Court** committed the child to **Frances Jones Dagoretti Children's Centre** for Care and Protection. On **17<sup>th</sup> September 2018** the child was placed into the custody of the Applicant under a **Foster Care Arrangement**.

15. **Section 158(4) (a)** of the **Children Act, 2001** provides as follows:-

**“(4) Subject to Section 159 an adoption order shall be accompanied by the following written consents to the making of an adoption order in respect of any child-**

**a. the consent of every person who is a parent or guardian of the child, or who is liable by virtue of any order or agreement to contribute to the maintenance of the child.”**

16. As stated earlier immediately upon delivery the subject child's biological mother indicated her desire and her intention to give up the child for adoption. She stated that she already had **six (6) children** and was totally unable to cater for another child. Even after being counseled by **CWSK** the mother remained adamant about her inability to take the child home and raise her. The mother was discharged and left the hospital on **3<sup>rd</sup> February 2016** leaving the baby behind.

17. On **2<sup>nd</sup> February 2016** the child's mother signed an Acknowledgment Certificate confirming having read and understood the **“Explanatory Memorandum”** on Adoption. On **17<sup>th</sup> August 2018** the child's mother signed a consent for the Adoption of her child. The said consent is annexed to the report of the Adoption Agency dated **10<sup>th</sup> March 2018**. I am therefore satisfied that the child's biological mother has voluntarily given her consent for this adoption as required by **Section 159(1) (a)** of the **Children Act**.

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 interest of the child shall be a primary consideration.” [own emphasis]**

19. The subject-child was born to a mother who was unable and /or unwilling to raise her. She therefore faced an uncertain future in Children’s Homes or Institutions. This adoption accords to the child the opportunity to be raised in a loving and stable home environment. The child has been in the custody of the Applicant since **September 2018** a period of about **three (3) years**. I have no doubt that she has bonded with the Applicant and her elder daughter. Indeed they are the only family the child now knows.

20. I was able to see and talk to the child online. She was a healthy happy **five (5) year old** girl who cheerfully answered the brief questions put to her by the Court. The child was clearly comfortable in the company of the Applicant. The photographs annexed to the Report of the **Guardian Ad Litem** depict a child who has been wholeheartedly assimilated into the Applicants family. The bond between the child, the Applicant and the Applicants elder daughter is obvious.

21. A home visit was conducted by the **DCS**. The Applicant was found to be living in her own home in **Kikuyu Town**. The home is a spacious three bed-roomed house within a secure compound with ample room for the two children to play. The Applicant has enrolled both children the same school. The Applicants parents and siblings also live close by thus the child has regular contact with her cousins, aunts, uncles and grandparents. The Applicant has engaged a Nanny to assist in the care of the child. I find that the environment is conducive for the social and mental development of the children.

22. I have carefully perused the Reports prepared by the **Adoption Agency**, the **Guardian Ad Litem** and the **Directorate of Children’s Services**. All three reports are positive and all recommend the adoption. I am satisfied that this adoption serves the best interests of the child and as such I make the following orders:-

1. The Applicant **MWG** is authorized to adopt the child known as **BABY JW aka BABY JT**.
2. Upon adoption the child shall be known as **JMW**.
3. **AGG** and **MNG** are appointed as the Legal Guardians of the child.
4. The Registrar-General is directed to make the relevant entry in the Adopted Childrens Register.
5. That vide this Adoption Order the child be and is hereby entitled to all rights and benefits under the Constitution and all applicable laws.

**DATED IN NAIROBI THIS 30<sup>TH</sup> DAY OF JULY, 2021**

.....

**MAUREEN A. ODERO**

**JUDGE**