



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. 66 OF 2019**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011**

**IN THE MATTER OF AN APPLICATION FOR THE KINSHIP ADOPTION OF SPK**

**BY**

**DEMM**

**(APPLICANT)**

**JUDGMENT**

1. The application before Court is an originating summons dated 7<sup>th</sup> May, 2019 seeking substantively the adoption of SPK a minor, by the Applicant DEM M. From the record, the Applicant is a dual citizen of Kenyan and the United States of America. He works as a system administrator for [particulars withheld]. He is married to RM and they have three children.

2. The applicant is the paternal uncle of the minor. The mother of the minor, CNM is the applicant's sister. The child in question was born on 20<sup>th</sup> September, 2003 Mater Hospital in Nairobi as evinced by the Birth Certificate Serial No. xxxx. Since birth, the subject minor has been under the sole care and custody of his mother as his biological father (JNM) refused to accept parental responsibility. That the applicant herein has been providing financial support for his education and medical care as his biological mother is financially incapable of taking care of the minor.

3. Prior to the hearing of the adoption application, Change Trust Adoption Society prepared and filed a report dated 30<sup>th</sup> January, 2019 and issued a certificate serial no. xxxx declaring the child free for adoption. The guardian ad litem PB filed a report dated 15<sup>th</sup> June, 2021 which was favourable and recommended the adoption of the child by the Applicant.

4. An officer from the office of the Director of Children Services conducted home visits and established that the applicant is financially and emotionally capable of providing for the upkeep and education of the child. He filed a report dated 14<sup>th</sup> June, 2021 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the child of the Applicant who has taken care of him since birth and that the Applicant has fulfilled the statutory requirements.

5. Article 53(2) of the Constitution, provides the over-arching principle which must apply whenever any decision concerning a child is to be considered. It provides that:

**“A child's best interests are of paramount importance in every matter concerning the child”**

This constitutional and internationally applicable principle is embedded and amplified in the Children's Act, No 8 of 2001, particularly at **Section 4(3)** of the Act.

6. This is a kinship adoption. Under the Guidelines for Alternative Family Care of Children in Kenya at page 153 kinship adoption is defined as adoption by adopters who are kin or relatives within the extended family of the child.

7. This is also a local adoption as elucidated in the case of **Re JNA [2018] eKLR** as follows:

“Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoptions. This is therefore considered to be a local adoption.”

8. The court is satisfied that the applicant is a suitable person with the demonstrated financial and social means to provide and care for the Minor, and has been doing so for a considerable period prior to making this application. It is also noted that the applicant and the Minor have a sound relationship and have bonded well. The biological father who refused to accept parental responsibility has granted his consent and so did the biological mother. The minor who is 17 years old has also given his consent to the proposed adoption by the applicant whom he described as a father figure to him. The applicant's wife and children have no objection to the adoption of the subject minor by the applicant.

9. Consequently my considered view is that it is in the best interest of the child to be adopted by the Applicant. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 7<sup>th</sup> May, 2019 and Order as follows:

- i. The Applicant **DEMM** be and is hereby allowed to adopt **SPK** (minor).
- ii. His date of birth is 20<sup>th</sup> September, 2003 and the place of birth is Nairobi as evinced in the birth certificate no. xxxx.
- iii. MWW is hereby appointed as the legal guardian of the event that the Applicant dies, or is incapacitated by ill health.
- iv. The Registrar General is directed to enter this Order in the Adopted Children's Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan Passport.
- vi. The guardian ad litem is hereby discharged.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 29<sup>TH</sup> DAY OF JULY, 2021**

.....

**L. A. ACHODE**

**HIGH COURT JUDGE**

**In the presence of.....Advocate for the Applicant**