



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 79 OF 2019 (OS)**

**AND**

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

**AND**

**IN THE MATTER OF BABY DF**

**AND**

**AN APPLICATION FOR ORDERS OF ADOPTION OF DF**

**BY**

**DOW and his wife LOM**

**JUDGEMENT**

1. By the Originating Summons dated 12.6.19 the Applicants DOW and his wife LOM seek to adopt a child known as Baby DF. The Applicants have been married for since 2009 but who at the time of starting this process did not have a child of their own. They have since been blessed with a biological child. The Applicants were assessed by Change Trust, a registered adoption society and taken through the adoption process and its implications. The society's case committee sitting on 14.11.15 approved the Applicants as suitable to adopt a child of their preferred sex.
2. The reports on record indicate that the child, who is estimated to have been born on 27.01.14. The child was on 6.7.14 found abandoned at [Particulars withheld], by one FAO of mobile number [...]. The matter was reported at Mlolongo Police Station vide Occurrence Book Number [...]. The child was admitted to Mahali pa Maisha for temporary care and protection pending committal. The Children's Court at Mavoko did on 21.1.15 *vide* Protection and Care Case Number [...] formally commit the child to the same home for a period of 1 year. In a final letter dated 8.1.15 Mlolongo Police Station confirmed that since the child was reported abandoned no one had come forward to claim him.
3. In compliance with Section 156 of the Children Act, Little Angels Network *vide* its certificate serial number [...], declared the child free for adoption on 29.5.15. Thereafter the child was identified for the Applicants and placed with them on 2.12.15.
4. By an order of this Court of 18.1.21, CK was appointed 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.
5. The Applicants have gone through the requisite assessments, and reports in respect thereof have been filed. Change Trust and Little Angels Network which arranged the adoption of the child filed their reports on dated 14.11.15 and 29.5.15 respectively. For the Director of Children Services was filed a report dated 24.2.21 by Winfred Ikinya, Principal Children's Officer and countersigned by Patrick Hyod Isadia, Assistant Director, Children Services. On her part, CK the Guardian *ad litem*, filed her report filed on 26.1.21. I have carefully assessed the said reports. They are all favourable, and recommend the proposed adoption.
6. I note that the child has been in continuous care and control of the Applicant for a period of about 6 years which is more than the statutory 3 months required under Section 157 of the Act. The Applicants are not younger than 25 years nor older than 65 years. They are more than 21 years older than the child. Section 158 of the Act has thus been complied with. The Applicants have been made aware of the consequences of an adoption order as well as the rights of an adopted child. They shall assume all parental rights and duties of the biological parents in respect of the child and cannot under any circumstances give up the child. I am satisfied that they fully understand that the adoption order is final and binding during the lifetime of the child and that the child shall have the right to inherit their property alongside their biological child. The Applicants have demonstrated that they have the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment. They propose to name the child GGW.

7. The Applicants have nominated LDM 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 proposed legal guardian was however not available to the Court for examination as to her readiness, willingness and ability to be legal guardian of the child. No reason was given to the Court for her failure to appear before Court. Accordingly, the Court is unable to appoint her as legal guardian for the child. In this regard, the Court does note that under Section 164 of the Act, appointment of a guardian in the case of a local adoption, is not mandatory.

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 he be adopted by the Applicants. 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 Applicants DOW holder of national identity card number [...] and his wife LOM holder of national identity card number [...] are hereby allowed to adopt Baby DF who shall henceforth be known as GGW.
- b) The child's date of birth is hereby declared to be 27.1.14.
- 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) CK, the guardian *ad litem* is hereby discharged.

**DATED, SIGNED and DELIVERED at Nairobi this 6<sup>th</sup> day of August, 2021**

.....

**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Applicants**

..... **Court Assistant**