



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**

**ADOPTION CAUSE NO. 8 OF 2018**

**IN THE MATTER OF ADOPTION OF BABY KM (CHILD)**

JNC.....APPLICANT

**VERSUS**

**BUCKNER KENYA ADOPTION SERVICES.....RESPONDENT**

**JUDGMENT**

1. Through an Originating Summons dated 24<sup>th</sup> May, 2018 and filed on 25<sup>th</sup> May, 2018, the applicant herein JNC moved to this court pursuant to Sections 154,156,157,160,169 120 of the Children Act and Sections 1A 1B and 3A of the Civil Procedure Act seeking orders that; JNC be appointed as guardian Ad litem to the subject herein.; JNC be authorized to adopt baby KM (minor) and the name of KM to change to SPC; the said child be declared Kenyan citizen and the Registrar General be directed to enter the name of the child in the adopted children's register.

2. The application is supported by an affidavit sworn on 24<sup>th</sup> May, 2018 together with supporting materials thereof. The applicant is a Kenyan single lady who has not been blessed with her own biological child due to medical complications. She is a form four school leaver currently operating a restaurant to earn a living for herself and the subject herein who was placed under her care and control on 8<sup>th</sup> July, 2013. Her motivation to adopt the baby has been propelled by the desire to be a mother to exercise her parental responsibilities; her love for children and, the desire to have her family.

3. Regarding the subject of these proceedings estimated to have been born around 23<sup>rd</sup> August, 2009, he was found on 16<sup>th</sup> January 2013 having been abandoned at [Particulars Withheld]. The good Samaritan who found him reported the incident at Kamukunji police station where the matter was booked vide OB number xxxx.The minor was admitted to Nairobi children's home on the same day. On 12<sup>th</sup> July 2013, he was transferred to Happy Life children's home for care and protection.

4. On 8<sup>th</sup> July, 2013, the baby was formally committed to the happy Life Children's home through the Nairobi Children's court case No. 18/2013. Vide its letter dated 13<sup>th</sup> August, 2013 Kamukunji police station confirmed that every effort to trace the parents or relatives to the baby had proved futile.

5. Further effort to trace the parents was made by the Nairobi Children's home by publishing twice the child's photo in the daily newspapers. Every effort in tracing the parents having failed and six months having lapsed, the child was declared free for adoption on 8<sup>th</sup> July, 2016. He was subsequently placed under the care and control of the applicant on 21<sup>st</sup> August, 2016 pursuant to section 157 of the Children Act.

6. Upon instituting these proceedings, JWC was appointed as a guardian Ad litem pursuant to the originating summons filed on 25<sup>th</sup> May, 2018. The Director Children Services and the guardian Ad litem were directed to file their social inquiry reports within 14 days.

7. Consequently, the Director Children Services filed his report dated 27<sup>th</sup> October, 2020 recommending the adoption. Equally, Buckner Kenya Adoption Services filed theirs on 24<sup>th</sup> September, 2018 also recommending the adoption. The guardian Ad litem also filed hers on 8<sup>th</sup> December, 2020 approving the same.

8. During the hearing, the applicant pleaded with the court to grant her prayers. She confirmed that she fully understood the consequences of adoption and that it was permanent. She acknowledged that she was under obligation to treat the baby like her own biological child.

9. I have considered the summons and the supporting material. I have also considered various witnesses' evidence. It is my duty to determine the following; whether the baby is suitable for adoption; whether the applicant is fit to adopt the baby; whether the adoption is in the best interests of the baby.

10. The subject herein was found having been abandoned at [Particulars Withheld] within Nairobi. Every effort by the police and Nairobi Children's home did not bear any fruit. Nobody has turned up to claim the baby. In the circumstances, consent of the parents or guardian is dispensed with pursuant to sections 158 and 159 of the Children Act.

11. As regards his nationality, Article 14 (4) of the Constitution is clear to the extent that;

**“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”**

12. In view of the above provision, the child is declared as a Kenyan citizen. Further, Section 157 of the Children Act does provide that, any child resident in Kenya is eligible for adoption. The baby herein was found within Nairobi city which is within the Kenyan borders. On account of eligibility, he is qualified to be adopted on grounds that; he is presumed to be a Kenyan by birth; he is a Kenyan resident; has been declared free for adoption and successfully placed for a mandatory period of three months under the care and control of the applicant.

13. However, the children officer raised one issue in his report regarding gender of the child being a male sought to be adopted by a female applicant. In particular, Section 158 (2) states;

**“An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order.**

**(a).....**

**(b) a sole female applicant in respect of a male child”.**

14. There is however a proviso that the court reserves the discretion to so grant the order if by so doing the court will be advancing the best interests of the child. I have already analyzed the circumstances under which the baby was abandoned. Nobody has claimed the baby to date. Since placement the year 2013, the child has fully integrated with the applicant. He has nowhere to call home other than the current home provided by the applicant. To take him back to the children's home will be devastating. Any abrupt change of environment will cast a shadow of uncertainty in his future. It will also interrupt his already acquired routine lifestyle. In my view, the interest of justice will supersede gender aspect and therefore the condition of gender is not material in this case.

15. Regarding the suitability of the applicant, she is a Kenyan citizen thus qualifying the adoption as a local one. She is aged 51 years old now thus satisfying the age criteria under Section 158 of the Children

Act which provides that a prospective adoptive parent should not be above 65 years nor below 25 years old.

16. Financially, she is operating a restaurant from which she generates about kshs60, 0000 per month besides getting kshs 6,000 from rental income of the houses she owns. Concerning shelter, she is residing in her own house hence an assurance that the baby is securely housed.

17. Besides the economic aspect; she has been described as socially and mentally upright; she is a Christian with no criminal record; she is medically, mentally and physically fit; She understands the consequences of adoption and that, it is permanent. In my view, the applicant has met the requisite conditions to adopt the baby.

18. As concerns the question whether the adoption is in the best interests of the child., Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children Act are quite emphatic that; before any decision concerning a child is made by anybody, a court of law or any administrative body or institution, the best interests of the child must be taken into account.

19. In the instant case, the child having been abandoned the year 2013 and nobody has come forward to claim him since then, he deserves somewhere to call home. He needs care and protection; generational identity; provision of basic necessities like food, shelter, education, clothing, medical care, physical and mental support so as to live like any other ordinary child with a biological parent. Therefore, it is my considered view that the adoption is in the best interests of the child. Accordingly, I am inclined to make orders as follows;

**(1) The applicant is hereby authorized to adopt baby KM who shall hereinafter be known as SPC.**

**(2) That the child's date of birth shall be 23<sup>rd</sup> August, 2009 and place of birth Nairobi, Kenya.**

**(3) That the consent of the biological parents is dispensed with.**

**(4) That the child is declared a Kenya citizen.**

**(5) That the guardian Ad litem is discharged.**

**(6) That the Registrar General to enter the adoption in the adopted children's *register***

**(7) That SGM be and is hereby appointed as a legal guardian in case of any eventually befalling the applicant.**

DATED, SIGNED DELIVERED VIRTUALLY AT MOMBASA THIS 22ND DAY OF OCTOBER, 2021

**J N ONYIEGO**

**JUDGE**