



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

ADOPTION CASE NO. 3 OF 2021

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF (MINOR) BABY M AKA BWM

WMK & JK.....APPLICANTS

JUDGMENT

1. The Originating Summons before me is dated 14th April, 2021 and filed in Court on 27th April, 2021. It is expressed to be brought under Articles 14(4) and 53(2) of the Constitution and Sections 157, 160, 163, and 170 and all other enabling provisions of the Children's Act. The Applicants are WMK and JK ("Applicants"). It seeks orders:

- 1) *That the Applicants herein be authorized to adopt the said child and the child be henceforth called BWM.*
- 2) *That the child be presumed to be a Kenyan citizen having been found in Kenya at the time of birth.*
- 3) *That the Registrar-General do make the appropriate entries in the Adopted Children's Register in respect of the minor and further that the Registrar of Births and Deaths do issue a Birth Certificate in respect thereof.*
- 4) *That the Guardian ad litem, MKN, be discharged and MWK and EMM be appointed as the legal guardian of the minor herein in the event that the Applicants herein are in any way incapacitated or in any way unable to discharge their paternal obligations.*
- 5) *That the Court does issue such other orders as may be necessary in the best interests of the child.*

2. The Summons is supported by a joint statement and affidavit by the Applicants. The Court directed that the Children's department do investigations and file a report. A report has been duly filed in Court. It is dated 10/12/2021. The Court also appointed a Guardian *ad Litem* to investigate and file a report. MKN, the Guardian *ad Litem*, has also filed a report dated 15/11/2021.

3. The Minor was found abandoned in Mavoko Open Market on 12/03/2013. The mother of the Minor duped a trader at the Market to look after the Minor as she shopped for groceries. She never returned. The matter was reported at Athi River Police Station as OB No. 34/12/02/2013. Later on, the child was committed to [Particulars Withheld] Children's Home through the Children's office and Nairobi Children's Court. A committal order P&C No. 85 of 2013 was effected on 19/04/2021. The minor was finally taken in by Kenya Children Home Adoption Society which issued a Certificate to declare her free for adoption on 09/10/2013.

4. The Applicants are Kenyan citizens. They formally got married on 30/10/2004 at [Particulars Withheld] Gospel Church. They filed a copy of their Marriage Certificate. The Male Applicant is a church minister while the female Applicant is a practicing nurse. They live in their own house in [Particulars Withheld], Naivasha. They have no biological children of their own. They are, by the documents produced in Court, financially capable and are perfectly willing to assume the responsibility of bringing up the Minor. They attached copies of their bank statements and copies of title deeds to their properties.

5. The Applicants have attached copies of Certificates of Good Conduct showing that they have never been convicted of any criminal offence. All the information placed before me demonstrates that the Applicants are emotionally and financially stable individuals who are fit to take the parental responsibility to the minor.

6. The Applicants were investigated by the Kenya Children's Home Adoption Society and found to be fit as adoptive parents. A copy of the Pre-Placement Report was annexed.

7. Both the report by the Guardian *ad litem* and the County Children's Coordinator were duly filed. They are quite favourable to the Applicants and highly recommend the adoption.

8. The minor has been in the care and protection of the Applicants since September, 2014. Both the Guardian *ad litem* and the County Children's Coordinator report that the child has bonded very well with the Applicants and that the Minor identifies them as father and mother respectively.

9. The Applicants wish to have MWK and EMM, a married couple, as the Legal Guardians of the minor. Both appeared before me and confirmed that they have consented to this appointment.

10. The Applicants, the Guardian *ad litem* and the Legal Guardian appeared before me and satisfactorily answered questions posed by the Court.

11. The primary consideration in an adoption Application is whether the Applicants have fulfilled all the pre-requisites to be granted the Adoption Orders. These are mainly found in Sections 158 and 163 of the Children Act. I have now carefully read all the documents filed in the case. I have confirmed that all the reports and consents needed are on file. The minor is free for adoption and Kenya Children's Home, an authorized adoption society has issued a Certificate to that effect. The biological parents are certifiably unknown and their consent is hereby waived. The consents of the proposed Guardian and the Applicants are on record.

12. In addition, I have read the report filed by the County Coordinator of Children Services as well as the reports by the Guardian *Ad Litem* and the Adoption Society. All reports are unanimous that it will be in the best interests of the minor for the Court to grant the Adoption Orders. I see no reason to dissent from those views. I am satisfied that the Applicants meet all the attributes required of Applicants in Section 158 of the Children Act. I am also satisfied that the Applicants understand the consequences and import of Adoption Orders. Finally, I am satisfied that it is in the best interests of the minor for the Adoption Orders to be given.

13. Having considered all the evidence, perused all the documents I am persuaded that the Applicants are fit adoptive parents who will provide a suitable home and parentage for the minor herein. Consequently, I allow the Originating Summons and grant the following prayers:

- i. THAT the Applicants be and are hereby authorized to adopt BABY M and the child shall be known as BWM henceforth.**
- ii. THAT BWM be and is hereby presumed to be a Kenyan citizen having been found in Kenya at the time of her birth.**
- iii. THAT the Registrar-General do make appropriate entries in the adopted children's register in respect of the minor, BWM.**
- iv. THAT the Registrar of Births and Deaths be and is hereby directed to issue the child with a certificate of birth in the name, BWM.**
- v. THAT MWK and EMM be and is hereby appointed Legal Guardians to the minor herein.**
- vi. THAT the Guardian *ad Litem* is discharged.**

14. Orders accordingly.

DATED AND DELIVERED IN NAKURU THIS 16TH DAY OF DECEMBER, 2021

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JOEL NGUGI

JUDGE