



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**ADOPTION CAUSE NO 6 OF 2016**

**IN THE MATTER OF ADOPTION OF FWM (minor)**

**BY**

**ENN AND SKG.....APPLICANTS**

**JUDGMENT**

1. This is a kinship adoption application brought by **ENN** and **SKG**, a married couple now aged 52 years and 50 years respectively. The couple resides and works for gain in the state of Georgia, United States of America (USA). The Applicants subscribe to the Christian faith. They got married in 1998 and are blessed with three biological children, namely, **MWK** (female), **GK** (male) and **ANK** (male). While the former is an adult, the other two children are still minors. Both children **MWK** and **KGK** understand and have consented to the adoption application.

2. The Applicants have applied to adopt **FWM** born on 29<sup>th</sup> July 2003 to **JMN**, a biological sister to the female Applicant **ENN**. The mother to the subject minor suffers paralysis arising from a disease described as neuritis. Thus, the subject minor has been in the care of the Applicants, albeit in the custody of a maternal grandmother, now deceased, as due to her ailment, her own mother is unable to fend for herself or support her. The subject's mother has given consent to the adoption. A maternal uncle, **PMM** has also given consent. The whereabouts of the minor's biological father are unknown.

3. The subject minor was declared free for adoption by the **Child Welfare Society of Kenya** *vide* certificate **No. 0774 of 6<sup>th</sup> June 2016**. The society also conducted social enquiries on the minor and Applicants and filed a report into court on 6<sup>th</sup> July 2016. The report highlighted the fact that the Applicants though Kenyan citizens by birth had acquired American citizenship. Based on this fact, the court directed on 27/3/19 that the Applicants furnish further affidavit information concerning their residence in the USA and future plans post adoption. A further affidavit filed into court on 12<sup>th</sup> November 2019 reiterated the kinship relationship between the Applicants and the subject minor, that the Applicants while working and living in the USA retain their home in Kangema, Murang'a County and that the proposed adoption was not an international adoption, but one in the category of kinship adoption, intended for the best interests of the subject minor.

4. The originating summons finally proceeded to hearing on 28<sup>th</sup> November 2019 in the presence of the female applicant, the subject minor's mother who is wheel/chair-bound, the guardian *ad litem* and MM from the adoption society. During the hearing the female Applicant **ENN** gave a sworn statement the highlights which include that:

- a) The Applicants hold dual Kenyan – US citizenship;
- b) Prior to migrating to the USA, the Applicants had lived with the subject minor because her mother fell ill soon after the minor's birth;
- c) Whenever on a visit to Kenya the Applicant (s) live with the subject minor;
- d) The Applicants' plans for the subject minor are to take her to live with the Applicants and her family and go to school in the USA; and
- e) The female Applicant works as a registered nurse with Well State Health System.

5. During the said proceedings, the court also interviewed the subject minor as required by the provisions of the Children Act. She was sixteen years old at the time, and a student in Form 2 at [Particulars withheld] Girls High School. She was articulate and well-poised. She confirmed that she understood the nature of the proceedings and expressed her desire to be adopted by her aunt, in order to proceed to the

USA to continue with her education.

6. At the close of the proceedings the court directed that the Applicants furnish copies of their USA passports, which they did. The court has now looked at all the documentation on record, including the proceedings of 28<sup>th</sup> November 2019. The court has also considered the reports filed by the guardian *ad litem* and the County Co-Ordinator Children Services, Kiambu County, all pursuant to the order made on 8<sup>th</sup> May 2018. These reports together with the report by the adoption society recommend the adoption.

7. It appears from these reports and other material on record that the Applicants are in good physical and emotional health; are financially stable and capable of providing for the subject minor as they have done in the past. Although the proviso to Section 157(1) requires that the adoptive parents have had, prior to an adoption order, continuous care and control of the subject for a period of three consecutive months prior to the adoption application, it is clear in this case that the Applicants have taken responsibility for the subject since her birth in 2003. And further, according to the female Applicant's oral statement to the court, the Applicants whenever visiting Kenya have taken in the subject to live with them. Moreover, the Applicants and subject minor have been positively assessed by the adoption agency.

6. The Applicants have three biological children of their own in respect of whom they exercise voluntary parental responsibility. In addition, the Applicants are related to the subject. The Applicants declared a monthly income of the equivalent of KShs.600,000/= and own a home in Georgia USA, in addition to immovable property in Kenya. Their sole motivation for the adoption is to provide a better life for the subject minor, thereby support their sister who is disabled by paralysis. Both Applicants appear to have strong social networks in their extended family which support the adoption. The Applicants also seem to have already established a parent-child relationship with the subject minor who appears eager for the adoption to happen.

7. In my considered view, despite the dual citizenship of the Applicants, this adoption application falls within the category of a local adoption and is a kinship adoption. So that the consent requirements in Sections 158(4) (e) and 162 of the Children Act do not apply. All other necessary consents under Subsection (4) have been provided. All in all, the court is satisfied that this application meets the considerations prescribed in Section 163 (1) of the Children Act, and more particularly that, pursuant to the provisions of Article 53(2) of the Constitution and Section 4(3) of the Children Act, the adoption proposed will be in the best interest of the subject. In addition, that the Applicants satisfy the requirements for a local adoption under the Children Act. In the circumstances, the court hereby allows the Originating Summons filed on 22<sup>nd</sup> July 2016 in terms of prayers 2 – 6.

**SIGNED ON THIS 12<sup>TH</sup> DAY OF JUNE 2020 AND DELIVERED VIA eMAIL TO THE PARTIES ON 12<sup>TH</sup> DAY OF JUNE 2020**

**C. MEOLI**

**JUDGE**