



**REPUBLIC OF KENYA**

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

**FAMILY AND PROBATE DIVISION**

**ADOPTION CAUSE NO. 93 OF 2019**

**IN THE MATTER OF THE CHILDREN ACT**

**(ACT NO. 8 OF 2001)**

**AND**

**IN THE MATTER OF BABY MT (MINOR)**

**AND**

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

**BY**

**AMN & JKM (APPLICANTS)**

**JUDGMENT**

**Background:**

1. The applicants **AMN & JKM** are a husband and wife having undergone a Kamba customary marriage on the 22<sup>nd</sup> of May, 2018. The applicants do not have any children of their own as their only child, a daughter died in 2003 at the age of 3. Since the death of their said child the female applicant has had several miscarriages and the applicants resolved to adopt a child, hence this adoption.
2. The applicants sought for placement of the child subject matter from Buckner Kenya Adoption Services with a view of adopting the said child. The court is informed that the Adoption agency took them through the necessary process before placing the child with them on the 9th of December 2018.
3. As a consequence, before court is an application for adoption of **BABY MT** by way of an Originating Summons dated the 1st of July 2019, brought pursuant to **Sections 4, 154, 156(1), 157(1), 158(1)(a) & 4(a), 159(4), (6), (7) & 8(a), 160 (1), (2), (4), 162, 163, 164 (1) & 170** of the Children's Act. The Applicants seek to adopt the minor and upon such adoption the child be known as **JNM**; they also seek to have **AMN & FNM** be appointed as legal guardians of the child in the event the applicants are incapacitated or are no more and the child still unable to fend for himself, further Registrar General do make appropriate entries in the Adoption Register.
4. Pursuant to a Chamber Summons dated 1<sup>st</sup>, July 2019, the court appointed **GWK** as a guardian *ad litem*, who by law is required to safeguard the interest of the minor as these proceedings are ongoing, investigate and report the circumstances pertinent to the adoption, intervene on behalf of the child should a need arise, make recommendations towards the adoption and undertake any other task the court may require.
5. On the same date the court also directed the Director of the Children's Services Department in Nairobi and the said guardian *ad litem* to investigate the Applicants' fitness to adopt and file their respective reports

**Reports:**

6. **Director of Children's Service Report**

The report is dated the 16<sup>th</sup> of September, 2019 and it gives a detailed history of the applicants' background. The male applicant is a senior accountant with one of the Bakeries in town. The female applicant is a tailor by profession but for now is a stay at home mother. They are aged 48 and 45 years respectively. The applicants lost their only child who was then aged 3 years in 2003 as earlier indicated.

From financial records made available the applicants are financially stable to be able to take care of the child. They have adequate resources that go with the responsibility being sought. The couple reside in Komorock in a one bedroomed house and due his age the child sleeps in his crib in the couple's room.

As relates to the child, he is said to have been found abandoned on the 14<sup>th</sup> of January 2018 in [Particulars Withheld] in the outskirts of Nairobi. He was about a day old. A good Samaritan who picked him reported the matter to Kasarani Police station and matter recorded under OB NO. [...], after which the child was admitted at Happy Life Children's Home temporarily. On the 19<sup>th</sup> of February 2018 the Children's Court in Case No. 45 of 2018, committed the child to the said home as a child in need of care and attention.

According to a police letter dated 23<sup>rd</sup> July 2018, no one came forth to claim the child.

The report recommends the adoption.

#### **7. Guardian Ad litem's Report:**

The Guardian *ad litem's* report is dated the 30<sup>th</sup> of August, 2019 and gives details similar to those in the Director of Children's Services report. The guardian *ad litem* further observed that the child is happy and well taken care of by the adoptive parents, who seem to love him very much. The guardian *ad Litem* also recommended the adoption.

8. The court takes this first opportunity to remind the applicants that as they acquire parental responsibility over the child, the child at the same time acquires rights under the law, including the right of inheritance.

9. The proposed legal guardian **AMN & FNM** have both consented to being appointment as such and are aware of their obligation should the need arise.

10. Having analysed the facts of the matter, the circumstances and the reports presented to this court, the court forms the opinion that the applicants do meet the necessary requirements of Law for purposes of this adoption and this adoption will no doubt be in the best interest of the minor.

11. Consequently, the court orders as follows:

i) **AMN & JKM** be and are hereby authorised to adopt **BABY MT** who upon this adoption will be known as **JNM**

ii) The Registrar General do register the adoption and issue a certificate.

iii) **AMN & FNM** are hereby jointly appointed as Legal Guardians to the minor

iv) And The guardian *ad litem* **GWK** is hereby discharge from the obligations earlier bestowed upon her by the court.

**SIGNED DATED and DELIVERED in open court this 24<sup>TH</sup> day of SEPTEMBER, 2020.**

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**ALI-ARONI**

**JUDGE**