



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAJIADO**

**ADOPTION CAUSE NO. 7 OF 2019**

**IN THE MATTER OF THE CHILDREN'S ACT, 2001**

**AND**

**IN THE MATTER OF AN APPLICATION FOR AN ADOPTION OF IK (CHILD)**

**BY**

**1. JMN**

**2. ACK.....APPLICANTS**

**JUDGMENT**

1. The applicants filed an Originating Summons dated 11<sup>th</sup> June 2019 seeking an order from this court allowing them to adopt Baby IK, a child who was willingly given up for adoption shortly after birth. She also seeks an order that upon adoption, the minor be renamed **RWM**; that **SW** and **JKK** be appointed the legal Guardians to the minor. They further seek an order that the minor be considered a citizen of Kenya. The applicants also seek the general order that the Registrar General do make appropriate entries in the register of adoption with respect to this adoption.

2. The Originating Summons is premised on the applicants' affidavit filed together with the summons. They state that the minor is estimated to have been born on or about 29<sup>th</sup> October 2017 at Meichizedek Hospital, Nairobi; that they are citizens of Kenya a [particulars withheld] supervisor and [particulars withheld] manager respectively residing at Kitengela in Kajiado County and that they are of good Christian faith and conduct.

3. The applicants state that the Minor was received into their custody and care on 24<sup>th</sup> April 2018 and has been in their continuous custody since then; that the child was declared free for adoption on 9<sup>th</sup> March 2018 by Little Angels Network, a registered Adoption Society and that they are adopting the child on their own free will. The applicants state that they have not received and inducement for this adoption and that they have not previously made any application for adoption.

4. The applicants attached consent by proposed legal guardians and other documents in support of their application including a report to show that the child was declared free for adoption and a pre-placement report. These, they state show that the child is free for adoption.

5. The court directed the County Children Welfare officer to file a report on the suitability of the applicants to adopt the child. The report was dated 4<sup>th</sup> November 2019 and filed on 28<sup>th</sup> November 2019 recommending the adoption. The report and signed by Margaret Sandiri, the Sub-County Children Officer.

6. The court appointed EIE, Identity Card No. [...] as the Guardian Ad Litem and she filed a report on 8<sup>th</sup> November 2019 and filed on 18<sup>th</sup> November 2019 also recommending adoption.

7. During the hearing of the Originating summons, the applicants moved the summons and urged the court to allow it. They relied on all the documents filed in support of the Originating summons.

8. I have considered the Originating Summons, the affidavits and all the documents relied on. I have also considered the reports from the Children Office and the Guardian Ad Litem which recommend adoption for the interest of the child.

9. The child was born around 27<sup>th</sup> October 2017 at Meichizedek Hospital, Nairobi and was given up for adoption by the biological mother to

**The Nest Children's Home** on 31<sup>st</sup> October 2017 shortly after birth. The minor was committed to the **The Nest Children's Home** for care and protection on 26<sup>th</sup> February 2018. The minor's mother signed a consent giving up the child for adoption dated 12<sup>th</sup> April 2018. Thereafter, the child was declared free for adoption by Little Angels Networks the adoption society on 9<sup>th</sup> March 2018 before she was made available for adoption. The applicants have had custody of the child since 24<sup>th</sup> April 2018 when the child was committed to them. The child's biological mother SNK willingly gave up the child for adoption two days after birth and signed consent to that effect. The whereabouts of the biological father is unknown as he abandoned her immediately after she conceived.

10. I have also noted from the record that the child had been committed to The Nest Children's Home by the Court in Children case No 54 of 2018, Nairobi and that applicants are willing to adopt the child who has well settled and the applicants have taken her as their own child. The child needs love and protection which the applicants are willing to offer on adoption.

11. According to the record, the child was given up for adoption because the mother could not afford to raise her physically, emotionally and financially. She was barely twenty years old

12. I have also perused the record and noted that the applicants are responsible people who have taken in the child as their own and they have so far done well in integrating the child as their own. The court observed the child during the hearing of this matter and was satisfied that the child was appeared happy and at home with the applicants. She exhibited a high degree of confidence with no sign of distress. She was quite happy throughout the session and moved around with ease playing with the applicants and their other child in court.

13. From the record, the applicants have the financial means to take care of the child. At the time of hearing, the proposed legal guardians, SW Identity Card No. [...] and JKK Identity Card NO. [...] confirmed to court that they were aware of their obligations as legal guardians should they be appointed.

14. On the basis of what I have seen on record, the minor is a needy child who was given up by her biological mother only two days in her life. She needs parental care to grow up as a normal child with emotional and physical protection which the applicants have stepped in to offer. In that regard, the applicants meet the legal requirements for adoption. Further, all reports recommended adoption for the benefit and wellbeing of the child. As the Constitution and the law state, in all matters concerning a child, the best interests of the child are paramount.

15. Given that all the documents, affidavits as well as reports support adoption. I am satisfied that this application has been made in the best interest of the child. The legal guardians have also confirmed that they are ready and willing to step in should the applicants be unable to discharge their parental responsibility to the child.

16. As already stated, the child's biological mother is Kenyan and gave her up for adoption while the biological father's whereabouts are unknown. The child was born in Kenya and in terms of the Constitution, she is presumed to be a citizen of Kenya.

17. For the above reasons, I am satisfied that the applicants are fit and proper persons to adopt the child, the subject of this application under the Children Act. Consequently, the application for adoption dated 11<sup>th</sup> June 2019 is allowed and I make the following orders;

***a) An order is hereby made authorizing the applicants JMN and ACK to adopt BABY IK***

***b) That the child be renamed RWM.***

***c) That SW and JKK are hereby appointed the legal guardians of the child in the event that the applicants die, or are incapacitated by ill-health.***

***d) That EIE, the guardian ad litem, be and is hereby discharged.***

***e) That the Registrar General be and is hereby directed to make appropriate entries of this adoption into the Register of Adoptions and issue a certificate to that effect.***

**Orders accordingly**

**Dated, Signed and Delivered at Kajiado this 27<sup>th</sup> day of November, 2020**

**E. C. MWITA**

**JUDGE**