



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 6 OF 2018**

**IN THE MATTER OF BABY CN ALIAS CU(CHILD)**

**AND**

**MR DML AND MRS GNG**

**JUDGEMENT**

1. The applicants via an originating summons dated 7/10/20 seeks orders to be authorized to adopt **CN** who shall forthwith be known as **CU**. That **DMG** and **FWM** (husband and wife) be appointed legal guardians of baby **CU** in event Applicants die or are incapacitated by any eventuality before the child attains the age of maturity. Court also to adopt the biological parents legal consent, as provided for in children's Act no. 8 of 2001 to relinquish her parental responsibility over the child and the court to direct registrar general to make an entry in adapted children register in the prescribed form.

2. The application is supported by affidavit of the applicants sworn on 7/10/20 which in summary states;

3. THAT the applicants are 47 and 44 years old respectively, a husband and wife having initially married customarily and later statutorily on 11<sup>th</sup> May 2017. A copy of marriage certificate is annexed and marked DML-1. They applied for adoption of a child with the Change Trust Adoption Society and their application was approved.

4. They took the above-mentioned child in their care and custody on 1/9/2017 and he has been in their constant care since that date. The mandatory fostering period has already expired. The foster Care Agreement is annexed herein marked DML-2. They have filed for adoption and do propose the appointment of SIMON KAMUNYA THEURI as some guardian ad litem in respect of the child they wish to adopt.

5. They have annexed to their application copies of the relevant documents, which include the 'consent to act as guardian' marked DML-3, DML-4, DML-5 respectively. The certificate declaring the child free for adoption is in the filed report of the child from Little Angels Network.

6. They have sworn they have sworn instant affidavit in support of appointment of guardian ad litem by this court and to direct the said guardian to prepare and submit a report.

7. Analysis and determination;

8. Applicable law

9. Section 158(I) Children's Act number 8 of 2001 provides as follows:

***“Adoption orders may be made upon the Application of a sole applicant or jointly by two spouses where the applicant and or at least one of joint applicants: Has attained the age of 25 years older than the child but has not attained the age of 65 years.*”**

**10. The prospective parent**

11. The applicants present evidence that the subject minor was born on 30/8/2016. He was given up for adoption by Nairobi children adoption case 263 of 2016 after he was given up for adoption by his mother by Limuru Children's center at Naivasha.

12. On the weight of evidence of the two applicants, each is aged 47 and 44 Respectively. This means that they meet the eligibility criteria under section 158(I) of the Act.

13. In relation to section 156(I) it provides that;

***“No Adoption proceedings shall be commenced of a child unless he child is at least 24 weeks old and has been declared free for adoption by a registered Agency.***

14. In the instant case Little Angel Network declared child free for adoption vide copy of Certificate is filed. The county children coordinator Samburu county via a report dated 11/2/019 conducted an in depth investigation and gave recommendation to the adoptee herein.

15. Section 159(I) of the Act provides inter alias follows,

***The court may dispense with any consent required under paragraph a, b and c subsection 4 of section 158 if satisfied that: In case of the parents or guardian of the child that he has disowned or neglected, persistently ill-treated the child.***

16. The SW (30) biological mother of the child gave up the child for adoption by Nairobi children adoption case 263 of 2016 after he was given up for adoption by his mother by Limuru Children’s center at Naivasha. The father of the child had abandoned her thus she was not able to take care of him as she had 2 other children with different father.

17. For above reason, the best interest of the child is the fundamental principle and central in determining their proceedings.

18. The multiple agencies involved in this proceedings have identified and considered the best interest of the minor CU in their individual reports filed in court. In my view applying the law and principles on the best interest of the child and welfare of the child, the applicants have been found suitable and fit as joint adoptive parents for baby CU.

19. Accordingly, the following orders are granted pursuant to the Originating summons dated 20/11/019;

**I. The applicants are hereby authorized to adopt CN who shall forthwith be known as CU.**

**II. The DMG and FWM (husband and wife) are by appointed legal guardians of baby CU in event Applicants die or are incapacitated by any eventuality before the child attains the age of maturity.**

**III. The Court also adopts the biological parents legal consent, as provided for in children’s Act no. 8 of 2001 to relinquish her parental responsibility over the child.**

**IV. The court hereby directs registrar general to make an entry in adopted children register in the prescribed form.**

**Dated, Signed and Delivered at NYAHURURU this 17<sup>th</sup> day of December, 2020.**

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**CHARLES KARIUKI**

**JUDGE**

**PRESENT**

Kihoro for applicant