



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**ADOPTION CAUSE NUMBER 5 OF 2018**

**IN THE MATTER OF BABY AM a.k.a. SMN.....INFANT**

**AND**

**HNK..... APPLICANT**

**JUDGMENT**

The application is brought by way of Originating Summons dated 22<sup>nd</sup> May, 2018. The applicant **HNK** through her advocates, Nancy Njoroge, Kairu & Company Advocates seek the following orders:

1. **Spent.**
2. **Spent**
3. **Spent.**
4. **THAT the applicant be authorized to adopt baby AM A.K.A SMN and the child be called the same henceforth.**
5. **THAT baby AM A.K.A SMN be presumed to be a Kenyan citizen by birth.**
6. **THAT the Registrar General do make the appropriate entries in the adopted children's register in respect of baby AM A.K.A SMN.**
7. **THAT the court does issue such other order as may be necessary in the best interest of the child.**
8. **THAT the costs be in the cause.**

The applicant **HNK** resides at Muchorwe within Molo Sub-County. She is a business lady and also she does farming.

She has never been married though she has had relationships before. She has never had children due to health complications. She thus desires to parent through adoption in order to have a family and continue to provide for a minor placed under her care.

Baby **AM a.k.a. SMN** was presumably born on 2<sup>nd</sup> September 2014 in Naivasha Karagita area. He was thrown into a pit latrine by his mother and was rescued by unnamed persons and taken to Naivasha District Hospital on 7<sup>th</sup> September 2014. He was admitted at the newborn unit and was discharged on 17<sup>th</sup> September 2014 and returned to his mother who was known.

His mother one TW did not want to keep him so she gave him up to Africa Gospel Church Baby Center on 23<sup>rd</sup> September 2014. The mother never gave formal consent as required by law. The case was reported at Nakuru Police Station as abandonment. A statement by TW dated 23<sup>rd</sup> September 2014 is available.

The matter was recorded at Nakuru Police Station vide Occurrence Book Number [particulars withheld].

Information available indicates that the child is in good health and that the home ensured that the child's immunization schedule was followed as per the Kenya Expanded Programme Guidelines on immunizations. His HIV test result is negative.

The minor was officially committed to Africa Gospel Church Baby Centre for care and protection at the Molo Children's Court on 14<sup>th</sup> January 2015 vide Protection and Care Case Number 7/15 for a period of three years.

The Nakuru Police Station vide a letter dated 24<sup>th</sup> June, 2015 asserted that no one went to the station to claim for the abandoned child and their efforts to trace the kindred of the child have been futile.

**HNK** approached the Kenya Children's Home Adoption Society on 19<sup>th</sup> September, 2016 with an intention of being ratified for placement with a male child with a view of eventually adopting. She was taken through the adoption process and its implications. An interview session and a home study was conducted by the society's personnel at her Muchorwe Molo residence on 30<sup>th</sup> January, 2017. The applicant was approved to be a suitable potential adoptive parent by the society's case committee sitting of 15<sup>th</sup> February, 2017. Baby **AM a.k.a. SMN** was freed by the society's case committee on its sitting on 19<sup>th</sup> July, 2017 and a Certificate of Declaring a Child Free for Adoption serial number 1367 was issued pursuant to **Section 156 (1) of the Children's Act 2001**. **HNK** was placed with baby **AM a.k.a. SMN** on 8<sup>th</sup> September, 2017.

On 17<sup>th</sup> October, 2018 the Court appointed **SNM** of P.O. Box 725 Molo as Guardian *ad Litem* of **AM a.k.a. SMN**. The Director of Children's Services in the Ministry of Labour and Social Protection was directed to conduct investigations as to the suitability of the applicant to adopt baby **AM a.k.a. SMN**. The consent of the biological parents of baby **SM a.k.a. SRK** was dispensed with.

Maureen Omondi, a personnel from the children's department conducted an interview on the applicant and later she together with another personnel named Agatha Omukanga made a home visit on 11<sup>th</sup> January, 2019 at her residence in Muchorwe Molo to further interrogate her on her suitability to adopt baby **AM a.k.a. SMN**. Mr. Edwin N. Njagi for the County Children's Coordinator filed a report to court dated 15<sup>th</sup> January, 2019.

Mr. Njagi of the children coordinator's office Nakuru is spot on in respect of the law applicable when a sole female applicant wishes to adopt a male child. **Section 158 sub-section 2(b)** of the **Children's Act** provides that a sole female applicant shall not be allowed to adopt a male child.

Courts have held that such an applicant may be allowed to adopt a male child in special circumstances following the guidelines of the National Adoption Committee dated 13/1/2010 pursuant to **Section 155** of the **Children's Act** for a female applicant wishing to adopt a male child.

The best interest of a child is paramount. I note the child herein has bonded well with the adoptive parent child as evidenced during their appearance in court. The child will benefit from getting a home, comfort, material necessities of life including education and sense of belonging. In the best interest of the child, I find no plausible reason to impede the adoption.

I place reliance on the decision of *Onyiego J* in **Re CKS (minor) [2018] eKLR** and an earlier decision by *Achode J* **Re Adoption of Baby JKM [2017] eKLR**.

I am persuaded that in the special circumstances of this case the adoption sought is proper.

I allow the originating summons dated 22/5/2018 and make the following orders;

1. **THAT the applicant be and is hereby authorized to adopt baby AM A.K.A SMN and the child be called the same henceforth.**
2. **THAT baby AM A.K.A SMN be and is hereby presumed to be a Kenyan citizen by birth.**
3. **THAT the Registrar General do make the appropriate entries in the adopted children's register in respect of baby AM A.K.A SMN.**

**Dated and Delivered at Nakuru this 28<sup>th</sup> day of February, 2019.**

**A. K. NDUNG'U**

**JUDGE**