



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 74 OF 2017 (O.S)**

**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001**

**IN THE MATTER OF ADOPTION OF CJ**

**BY**

**SK AND WG (APPLICANTS)**

**JUDGMENT**

1. The Applicants SK and WG are in a monogamous marriage which was solemnized at [particulars withheld] in Kiambu County on 5<sup>th</sup> June, 1999. They have no children of their own. They wish to adopt the female child known as CJ through the Originating Summons dated 24<sup>th</sup> April, 2017.
2. From the pleadings, the court gathers that both Applicants are self-employed business persons. They reside in Wanginge area and both profess the Christian faith.
3. Records before the court indicate that the minor in this matter was found abandoned outside the outpatient casualty area of the Rift Valley Provincial General Hospital on 7<sup>th</sup> March, 2015 and rescued by the hospital security guards. She was admitted at the hospital where she remained for a period of two (2) weeks. On 16<sup>th</sup> March, 2015 the matter was reported to Nakuru Police Station where it was booked vide OB No. [xxxx]. The child was admitted at AGC Baby Center Nakuru on 20<sup>th</sup> March, 2015.
4. On 12<sup>th</sup> May, 2015 the child was committed to the care of the AGC Baby Centre Nakuru by the Children's Court at Nakuru vide P&C Case No. 200 of 2015. The OCS Nakuru Police Station issued a final letter dated 3<sup>rd</sup> November, 2015 in which they confirmed that no one had come forward to claim the child and attempts to trace her kin had proved futile. On 6<sup>th</sup> August, 2015 the Applicants took the child into foster care with a view of adopting upon signing a Care and Placement agreement. Since then the child has been in the continuous care and custody of the Applicants.
5. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated 11<sup>th</sup> July, 2016. They had also issued a Certificate of Serial No. [xxxx] dated 8<sup>th</sup> July, 2016 declaring the child free for adoption. The guardian ad litem MKK filed a report dated 12<sup>th</sup> March, 2019 which was favorable and recommended the adoption of the child by the Applicants.
6. An officer from the Department of Children Services, Nairobi County conducted home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child. She filed a report dated 18<sup>th</sup> July, 2018 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants and that the Applicants have fulfilled all the statutory requirements.
7. The orders sought by the Applicants herein relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

**“A child's best interests are of paramount importance in every matter concerning the child.”**

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **section 4(3)** thereof which amplifies this principle.

8. This is a local adoption and the Applicants, in my opinion have fulfilled the requirements for a local adoption under the **Children Act, 2001**. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. I am convinced that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought.

9. The consent of the biological parents of the child was dispensed with since the child was abandoned at infancy and the parents could not be traced to give the consent.

10. GNW, a brother to the female Applicant, and his wife IN by a joint affidavit sworn on 18<sup>th</sup> April, 2017 consented to be appointed as the legal guardians in the event that the Applicants are incapacitated and cannot care for the child.

11. The child was in court during the hearing and was jovial and appeared to have bonded well with both Applicants who appeared eager to have the minor as their child. This court has therefore formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Not only does she gain a loving family, she also gains a sibling as the Applicants are in the process of adopting a male child whom they have also been fostering.

12. I have perused the entire record and find that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought.

13. From the foregoing, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 24<sup>th</sup> April, 2017 and order as follows:

- i. The Applicants, SK and WG are hereby allowed to adopt the female child known as **CJ** who shall henceforth be known as **SW**.
- ii. Her date of birth shall be 7<sup>th</sup> March, 2015. She is presumed to have been born in Kenya and the place of birth shall be Nakuru.
- iii. GNW and his wife IN are hereby appointed legal guardians of the child in the event that the Applicants die or are incapacitated by ill-health.
- iv. The Registrar General is directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- v. The guardian ad litem is hereby discharged.

It is so ordered.

**SIGNED DATED and DELIVERED in open court this 11<sup>th</sup> day of April, 2019.**

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**L. A. ACHODE**

**HIGH COURT JUDGE**