



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 121 OF 2018 (O.S)**

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

**IN THE MATTER OF ADOPTION OF BABY DCM ALIAS DCM**

**BY**

**CMT AND DKMT (APPLICANTS)**

**JUDGMENT**

1. The Applicants CMT and DKMT are in a monogamous marriage which was solemnized at the Nairobi Pentecostal Church on 15<sup>th</sup> April, 2000. They have no biological child of their own but have an adopted son, JHT, whom they adopted by an order of the Court issued on 30<sup>th</sup> November, 2016. They wish to adopt Baby DCM alias DCM, a minor of the female sex, through the Originating Summons dated 6<sup>th</sup> September, 2018.
2. From the pleadings the court gathers that the male Applicant is an Educator at the [particulars withheld] while the female Applicant works with [particulars withheld] as a Customer Service Manager. They reside in a three bedroom house in Ruiru, Kiambu County. Both Applicants profess the Christian faith.
3. Records indicate that the minor in this matter was given up for adoption by her biological mother a few days after her birth. The Little Angels Network Adoption Society explained to the biological mother the implications of her decision and furnished her with the "Adoption of Children - Explanatory Memorandum for Biological Parent/ Guardian". A certificate of acknowledgment of the Explanatory Memorandum is annexed to the application. She signed an initial consent on 2<sup>nd</sup> July, 2017. The child was admitted to New Life Home Trust Nakuru on 2<sup>nd</sup> July, 2017 for care and protection. The child was on 4<sup>th</sup> July, 2017 transferred to the New Life Home Trust in Kilimani Nairobi.
4. On 20<sup>th</sup> September, 2017 the child was committed to New Life Home Trust Nairobi by the Children's Court at Nakuru vide P&C Case No. 44 of 2017. The biological mother then swore a formal statutory Consent to an Adoption order in respect of an infant on 21<sup>st</sup> October, 2017. On 1<sup>st</sup> December, 2017 the Applicants took the child into foster care with a view of adopting upon their signing a Foster Care Agreement dated 1<sup>st</sup> December, 2017.
5. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report dated 29<sup>th</sup> September, 2017. They also issued a Certificate of Serial No. 001916 dated 29<sup>th</sup> September, 2017 declaring the child free for adoption. The guardian ad litem I K M filed a report dated 12<sup>th</sup> November, 2018 which was favourable and recommended the adoption of the child by the Applicants.
6. An officer from the office of the Director of Children Services 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 30<sup>th</sup> November, 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 met all the requirements in the statute. Further that the child has flourished under the care of the prospective adoptive parents and has bonded well with the Applicants and her adopted brother.
7. The Children's officer however took issue with the fact that there was no DNA evidence to prove that the one offering the child is her biological mother. Ms. Natasha from Little Angels Network asked the court to dispense with DNA testing stating that they had attached the child's birth certificate in their report and interviewed the child's biological mother. Further that they had attached the contact of the clinician who helped deliver the child.
8. On 21<sup>st</sup> February, 2019 the court directed the Director Children Services to interview the biological mother of the child and prepare a further report. An officer from the office of the Director Children Services interviewed the child's biological mother on 21<sup>st</sup> February, 2019 and filed a Supplementary Report dated 25<sup>th</sup> February, 2019. She confirmed that the details on record about the child's date and place of

birth, name and date when the child was given up match those given by the child's biological mother. She noted that the biological mother stands by the consent she gave concerning giving up the child. The Children's officer recommended the adoption of the child by the Applicants.

9. The court observes that this is a local adoption and the Applicants, in the opinion of the court have fulfilled the requirements for 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. The child was in court during the hearing and appeared to have bonded well with the Applicants. The child was observed to be in good health and in good spirits and had flourished under the care of the Applicants.

10. The consent of the child's biological father was dispensed with since he has never taken up responsibility over the child and his whereabouts are unknown. The Applicants' family members are said to be aware of the proposed adoption and support it.

11. MMMM, a brother to the female Applicant, and his wife KAM by a joint affidavit sworn on 6<sup>th</sup> September, 2018 consented to be appointed as the legal guardians in the event that the Applicants are incapacitated and cannot care for the child.

12. It is important to note that the orders sought by the Applicants herein relate to a child. In any matter concerning a child, the best interests of the child are what is of paramount importance as provided for under **Article 53(2)** of the **Constitution** and **section 4(3)** of the **Children Act No. 8 of 2001**.

13. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicants and the child during the hearing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants.

14. Reasons wherefore I allow the prayers sought in the Originating Summons dated 6<sup>th</sup> September, 2018 and order as follows:

- i. The Applicants, CMT and DKMT are hereby allowed to adopt **Baby DCM alias DCM** who shall henceforth be known as **AWT**.
- ii. Her date of birth shall be 30<sup>th</sup> June, 2017. She is presumed a Kenyan citizen by birth and the place of birth shall be Nakuru.
- iii. MMMM and his wife KAM 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.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

**SIGNED DATED** and **DELIVERED** in open court this **10<sup>th</sup>** day of **April, 2019**.

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**L. A. ACHODE**

**HIGH COURT JUDGE**