



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 154 OF 2017**  
**IN THE MATTER OF THE CHILDREN'S ACT, 2001**

**AND**

**IN THE MATTER OF JW (CHILD)**

**AND**

JNN.....APPLICANT

SNK.....APPLICANT

**JUDGEMENT**

1. The applicants JNN and SNK (herein referred to as the Applicants) approached this court by way of Originating Summons dated 29<sup>th</sup> October 2018 seeking the following orders:

- a. That the child be presumed to be a Kenyan citizen by birth.
- b. That the Director of Immigration be authorised to issue the child with Kenyan Citizenship.
- c. That the Applicants be authorised to adopt BABY JW to be known as MN.
- d. That Mr. GNN be appointed the legal guardian of the child.
- g. That the Court be pleased to make any further orders it deems necessary.

2. The Applicants are Christians who got married under the African Christian Marriage and Divorce Act Cap 151 at [Particulars withheld] Limuru. Despite having been married for over 11years, their union has not been blessed with any issues hence this adoption application.

3. The applicants aged 44 and 38 years respectively, are both Kenyan citizens by birth. They also stated that they have not made such an application before and that they are financially capable of taking care of the minor. In support of this assertion, they attached as evidence Bank statements and property ownership documents such as Title Deeds for Limuru/Kamirithu/[xxxx] and Limuru/ Kamirithu/[xxxx]).

5. Regarding the child presumed to have been born on 30<sup>th</sup> November 2017, he was found abandoned in a bush within Naka Estate in Nakuru County on 31<sup>st</sup> January 2017. His parents disappeared and efforts to trace them have not been fruitful.

6. He was booked at Bondeni Police Station under OB NO. [xxxx]. The minor was then placed temporarily at New Life Home Trust Nakuru.

7. On 31<sup>st</sup> January 2017, he was committed to New Life Home Nakuru for protection and care. This was by a recommendation by the Sub-County Children's Officer Nakuru vide a letter dated 8<sup>th</sup> February 2017. The child was formally Committed into the home under the Nakuru Children's Court protection and care case no 43 of 2017 for a period of 3 years. According to the police final letter dated 18th October 2017, every effort to trace the parents to the baby or any other close relative has been futile.

8. The child was freed for adoption by the Little Angels Network case committee on the 3<sup>rd</sup> November, 2017 Vide certificate Serial Number [xxxx] pursuant to **Section 159(1) (a) (i)** of the **Children Act** which states that:

***“Abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and protection of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months.”***

9. On 6<sup>th</sup> 2018, JKK was appointed as guardian Ad litem and the Director Children Services directed to file assessment and evaluation reports of the applicants within 45 days. Prior to the hearing of this application, the Director Children Services, Little Angels Adoption Society and the guardian Ad litem, filed their respective reports thus recommending the adoption. They described the applicants as people of means, financially stable, Christians and responsible people with no criminal records.

10. In preparing their assessment reports for adoption, the stake holders relied on the following documents.

- a. **Initial Police Letter with OB No. [xxxx] dated 31<sup>st</sup> January 2017.**
- b. **Admission form from New Life Home Trust Nakuru.**
- c. **First Committal Order C & P case No. 43/2017 dated 8<sup>th</sup> February 2017.**
- d. **Final Police Letter dated 18<sup>th</sup> October 2017.**
- e. **Renewed Committal Order C & P case No. 272/2011 dated**
- f. **Certificate of declaring a child Free for Adoption with serial number [xxxx] dated 3<sup>rd</sup> November 2017.**

11. During the hearing, the applicants expressed their desire to be allowed to adopt the baby whom they fondly referred to as their son. They stated that they had understood the consequences of the adoption, the rights of the child and that it was permanent.

12. I have considered the originating summons herein and the supporting documents. There is no doubt that the applicants are Kenyan citizens whose age is well within 25 and 65 years which is the age bracket recommended for an adopting parent in compliance with Section 158 of the Children Act. As stated, the child was abandoned in the bush by an unknown person and every effort to trace his relatives have been futile. Accordingly, consent is dispensed with pursuant to section 159 of the Children Act.

13. Article 14(4) of the Constitution provides that, any child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth. Since both the applicants and the baby are Kenyans, this adoption is qualified to be a local adoption. From the stake holders' reports, my own assessment and interrogation of the applicants, I am satisfied that the applicants have met the necessary legal requirements to adopt the baby.

14. In the matter of L.O (CHILD)[2012]eKLR the court had this to say regarding the obligations of an adopting parent:

***“For the avoidance of doubt, the rights and duties of the biological parents of the child are hereby extinguished and all the parental rights, duties, obligations and liabilities of the child, JMM, now vest in and shall be exercisable by and enforceable against the Applicants as the adopter parents as if the child were born in wedlock to the adopter parents and the child, to all intents and purposes, now stands to the adopter parents as a child born in wedlock and both adopter parents shall henceforth be the lawful father and mother of the child.***

15. Finally, in deciding the application, the court is duty bound to make a finding as to whether the adoption is in the best interest of the baby. To arrive at this finding I am guided by Article 53(2) of the Constitution and **Section 4(2) of the Children Act 2011**, which provides;

***“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.***

16. Considering that the child was abandoned and nobody has come forward to claim him, and further taking into account that the child has been with the applicants since placement, it will not be in his best interest that they be separated. The baby has fully bonded with the applicants who have shown immense love towards him as caring and responsible parents. I see no need in rejecting the application. The baby is in need of parental love, basic provision like food, education, medical care, shelter and clothing all which the applicants are capable of providing. I am satisfied that the adoption shall be in the best interest of the child in the circumstances and therefore do allow the same with orders as follows;

- (i) **That the Applicants be and are hereby authorised to adopt the child known as JW who shall hence forth be known as MN.**
- (ii) **That his date of birth shall be 30<sup>th</sup> January 2017 and place of birth Nakuru Kenya.**
- (iii) **That the consents of the biological parents of the child are hereby dispensed with.**
- (iv). **That the Registrar General shall enter this adoption in the Adoption Register.**
- (v) **That the minor be declared a Kenyan citizen by Birth.**

(vi) That an order of adoption be issued to the Applicants herein.

(vii) That the court hereby appoints GNN as the legal guardian of the minor in the event of death or any incapacitation of the applicants.

(viii) That the guardian ad litem, JKK be discharged forthwith.

DATED, DELIVERED AND SIGNED THIS 25<sup>TH</sup> DAY OF JULY 2019

J.N.ONYIEGO

JUDGE