



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**ADOPTION CAUSE NO. 3 OF 2016**

**IN THE MATTER OF THE CHILDREN ACT, (2001) CAP 141 LOK**

**AND**

**IN THE MATTER OF THE ADOPTION OF**

**BABY SW *alias* S H.....MINOR**

**BY**

**G N K (INTENDED ADOPTIVE FATHER).....1ST APPLICANT**

**M W N (INTENDED ADOPTIVE MOTHER) .....2ND APPLICANT**

**JUDGMENT**

The Applicants, the INTENDED ADOPTIVE FATHER and MOTHER GNK and MWN have sought, by the Originating Summons dated 28<sup>th</sup> January 2016, supported by their individual affidavits in support and joint statement of the same date, orders, allowing them to adopt BABY SW *alias* SH (hereinafter the baby/ child).

The Applicants are husband and wife aged 40 years each as at the time of hearing. Both are Christians and married in April 2005. They both work for a Charitable Children's Institution and reside in Nyeri. They have two biological children of their own, two boys LK and CM aged 10 and 8 respectively. The family desires to have a daughter and a sister and opted to adopt instead

According to the Social Inquiry Reports by the Department of Children Services filed on 12<sup>th</sup> March 2018, and documents from Nyahururu Law Courts the child in this matter was born on 18<sup>th</sup> November 2014 at 'NDH'. the mother was discharged from the hospital with the baby. On 23<sup>rd</sup> November 2014 the baby was found dumped outside St. Martin's Children's home. The report was booked at Nyahururu Police station vide O.B. No. 25/23/11/2014. The child was rescued to New Life Trust Home. Investigations led to the arrest and arraignment on the biological mother in court. She was convicted and sentenced to imprisonment. On 14<sup>th</sup> January 2015, the child was committed by the Nyahururu SPM's court vide P&C case no xxxx to New Life Home Trust Nyeri for care and protection.

The biological mother of the child JGW gave consent to the adoption vide a consent signed on the 23<sup>rd</sup> June 2015.

On the 29<sup>th</sup> August 2015, the applicants herein and New Life Home Trust entered in a Care Agreement for the baby. Change Trust declared the child free for adoption vide the certificate dated 15<sup>th</sup> September 2015

The child remained in continuous custody and care of the applicants since 2015.

In an application filed on 28<sup>th</sup> January 2016 the Applicants sought orders for the appointment of child's *guardian ad litem* and that the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit their report. On 9<sup>th</sup> November 2017 this Court issued an order appointing the *guardian ad litem* and further directing the Director of Children's Services to prepare a home study report in respect of the applicants and the child for submission to the court.

The matter was heard on 13<sup>th</sup> March 2018. I heard the adoptive parents and the legal guardian. After we cleared the court to proceed in camera, I had the opportunity to observe the three children and their parents together in the courtroom. They appeared to have bonded well. It is difficult for a child to feign spontaneity.

All the statutory reports filed in respect of the proposed adoption found the applicants suitable persons to be the parents of the and recommended that they be allowed to adopt the child.

The Report filed on 12<sup>th</sup> March 2018 by the DCS is the most recent. It confirmed the position of the previous reports, the child having now lived with the applicants for about three years.

The application is with respect to a local adoption. The Applicants have fulfilled all the legal requirements relating to the adoption of the child. The consent(s) of the biological parent(s) of the child required by section 158(4) Children Act, Cap 141 Laws of Kenya was obtained.

I have considered each of the home visit reports by the *guardian ad litem*, the Adoption Society and the two by the Children officers representing the Director Children's Services. These have established first, that the child's mother gave her consent, second, the child has lived with the adoptive parents and their two sons since August 2015, and they have bonded well, the applicants have been able to provide for the children both emotionally and financially, and have the capacity and ability to provide for this baby her upkeep and education. This child has found a home with siblings and parents who love and care for her Working with children who need care and protection gives them that added advantage of the knowledge of what it means and what needs to be done. They are a young stable family with the potential of giving this baby a good upbringing.

It goes without saying that the rejection by a parent who for some reason is unable to parent must be traumatizing even for a baby. The need for parental care, love and protection is basic for every child. Through its fulfilment the child's chances of survival, growth fulfilment and the achievement of its full potential are assured. A family, and not an institution is the proper place for the child. That is why we have found it necessary to legislate the right to get it and the duty and obligation to provide it. In the Children's Act, every child has a right to be the protection and care of his or her parents according to the children Act. The Katiba at Article 53 provides for the rights of the child including the right to parental care and protection. The Children Act provides an exposition of these rights and it is clear from the definition of parental responsibilities at section 23, the first call for the realisation of these rights is within a family setting. That is why, where it is not available in its natural setting, we have provided for it in the Act as alternative care, fostering, guardianship and ultimately, adoption. This child herein has so far been able to enjoy those rights ensuring her right to survival and development.

From the foregoing I am persuaded that it would be in the best interests of the child to allow this application for adoption. With the order in force the applicants will now take up the full responsibility that comes with parenthood, and the child, the place that many take for granted, of being her parents' child, her brothers' sister, and to take up the duties that come with that position as well. To that end, I make the following orders;

1. The application for adoption is granted and intended adoptive parents are hereby allowed to adopt Baby SW
2. Her date of birth is the 18<sup>th</sup> November 2014 as per the birth certificate of birth
3. The place of birth shall be as per the certificate of birth
4. Her name shall be SW
5. The Registrar General is directed to duly enter this order in the Adoption Children Register
6. The guardian ad litem is hereby discharged.

It is so ordered.

Dated, delivered and signed at Nyeri this 22<sup>nd</sup> Day of May 2018

**Mumbua T. Matheka**

**Judge**

In the presence of;

Court Assistant: Albert Atelu

Mr. Kariuki holding brief for Mr. Kamenju