



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**ADOPTION CAUSE NO. 106 OF 2017**

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

**AND**

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY MR (MINOR)**

**BY**

**S M K.....1<sup>ST</sup> APPLICANT**

**J W K.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Through an Originating Summons dated 24<sup>TH</sup> July 2017 and filed on 26<sup>th</sup> July, 2017, SMK and JWK herein referred to as the 1<sup>st</sup> and 2<sup>nd</sup> applicants respectively seek to adopt Baby MR whose name shall henceforth be TNM; that the consent of the biological parents be dispensed with and that the registrar general do enter the adoption orders in the adoption register.
2. The application is supported by a statement of particulars dated the same day and an affidavit in support sworn on 24<sup>th</sup> July 2017 jointly by the applicants.
3. The applicants herein are Kenyan citizens who contracted their Kikuyu Customary Law marriage sometime the year 2005. Due to the 2<sup>nd</sup> applicant's medical complications, the couple has not been able to get any of their own biological child. Their motivation to adopt the minor herein has been prompted by the desire to have a baby to fill the gap of not having a child of their own, the need for company and somebody to inherit their property.
4. Regarding their capability to provide for the baby, the 1<sup>st</sup> appellant is a welder and the second applicant a nurse by profession currently working at [particulars withheld]. Their monthly income is estimated to be around Kshs.75,000/=.
5. Concerning the minor sought to be adopted, she was found having been abandoned on 29<sup>th</sup> June 2015 at African International University. A Good Samaritan who rescued the baby reported the matter at Karen Police Station vide OB No. [Particulars withheld]. Through a police letter dated 30<sup>th</sup> June 2015, the baby was referred to Nyumbani Children's Home where she stayed for three days before being transferred to New Life Home Trust on 3<sup>rd</sup> July, 2015 for care and protection.
6. The subject was formally committed to New Life Home Trust on 16<sup>th</sup> April 2015 by Nairobi Children's court in Protection and Care Case No. 239/2015. According to the final police letter dated 18<sup>th</sup> April 2016, their efforts to trace the parents and or relatives to the baby have been futile.
7. Consequently, the baby was declared free for adoption by Buckner Kenya Adoption Society on 8<sup>th</sup> July 2016 and a certificate S/No. [Particulars withheld] issued. Pursuant to Section 157 (1) of the Children's Act, the baby was placed under the foster care and control of the applicants for the mandatory three months consecutive period preceding the application for adoption. Vide a Chamber Summons dated 24<sup>th</sup> July 2017, [particulars withheld] was appointed as guardian ad litem on the 11<sup>th</sup> October 2017 and the director children services authorized to file an assessment and evaluation report within 45 days.
8. Prior to the hearing, the KKPI Adoption Society, Director Children Services and the guardian ad litem filed their respective reports on 28<sup>th</sup>

September 2017 and 14<sup>th</sup> February 2018 thus recommending the adoption. Both reports described the applicants as mentally, physically and psychologically fit, financially stable and committed Christians with no criminal records.

9. During the hearing, the applicants urged the court to allow them adopt the baby. They acknowledged having been sufficiently counseled and understood the consequences of adoption.

10. I have considered the application herein, statement and affidavit in support together with the supporting documents. Is the baby available for adoption? The subject herein estimated to have been born on 29<sup>th</sup> June 2015 was found abandoned on the same day. She was taken to Karen Police Station where the incident was reported. Despite every effort to trace the parents or any of her relatives, nobody showed up. This is evident from the police final letter dated 18<sup>th</sup> April 2016. Since nobody has laid claim over the baby, consent is hereby dispensed with in compliance with Section 159 (1) of the Children's Act.

11. Under Section 157 (1) of the Children's Act, any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya. Article 14 (4) of the Constitution presumes a child below 8 years who is found in Kenya and whose parents or nationality is unknown to be a Kenyan citizen. In the instant case, the baby was found abandoned at African International University and the parents are not known. She is therefore presumed to be a Kenyan citizen hence available for adoption in compliance with Section 157 (1) of the Children's Act.

12. Regarding the suitability of the applicants, both stake holders' reports have recommended the couple. From their home visits, they described the applicants as mentally, physically and psychologically fit. They are responsible and caring people with a firm Christian foundation and with no criminal record. Their monthly income is about Kshs.75,000. They also live in their own house within Thika [particulars withheld] estate thus providing a conducive environment for child development and growth.

13. The applicants are Kenyan citizens aged 41 and 37 years respectively. They therefore meet the requisite age bracket of which is not less than 25 years and below 65 years in compliance with Section 158 (1) of the Children's Act.

14. Upon interrogation by the court, the applicants appeared to be responsible and caring. They understood the role of parental responsibility, and their obligations including the child's right to inherit their property. I am therefore convinced that the applicants have met the necessary requirements for adoption. This being a local adoption, I am convinced that they are suitable to adopt the baby.

15. Concerning the best interests of the baby, it is crystal clear that the baby has no known parent or relative. The only close persons she knows are the applicants. She deserves a chance of parental guidance and care, education, medical care, shelter, food and clothing. All these provisions are basic things or necessities that the applicants are able to provide.

16. Article 53 (2) of the Constitution provides that, in making decisions affecting the affairs of a child, a court must be guided by the primary factor which is the best interests of a child. Section 4 (2) & (3) of the Children's Act reinforces the same principle. It is my conviction that it is in the best interests of the child that she be adopted. Accordingly, the Originating Summons herein is allowed with orders as follows:

**(a) That the applicants SMK and JWK be and are hereby allowed to adopt baby MR who henceforth shall be known as TNM.**

**(b) That the date of birth shall be 29<sup>th</sup> June 2015 and place of birth Karen, Nairobi.**

**(c) That the consent of her biological parents is hereby dispensed with.**

**(d) That the Registrar General is directed to enter the adoption in the adoption register.**

**(e) That the guardian ad litem herein is hereby discharged.**

**(f) That MW shall be the legal guardian to the baby in the event of death or any eventuality befalling the applicants.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19<sup>TH</sup> DAY OF DECEMBER, 2018.**

**J.N. ONYIEGO**

**(JUDGE)**