

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.177 OF 2014

IN THE MATTER OF THE CHILDREN, 2001

AND

IN THE MATTER OF AN ADOPTION OF BABY V W (CHILD)

D E H & J M H.....APPLICANTS

JUDGMENT

1. **D E H** and **J M H** hereinafter referred to as the applicants are seeking to be authorized to adopt baby **V H (child)**. That to be authorized to adopt **V W** a child to be known as **V W H**. The applicants got married on 21st March 1997, **D E H** was born on 3rd July 1948 in Fort Worth, Texas USA and that **J M H** was born 24th Mary 1951 in Dallas, Texas USA. That they are Americans citizens, **D E H** holding a Class E Work Permit in Kenya and **J M H** a dependents pass. That they are Christian missionaries by profession and are founders/Directors of the [particulars withheld] in Africa Trust located in Karen. That they are also directors of a Children's home in Karen namely [particulars withheld].

2. The applicants in their statement in support of the application aver that the said child was admitted at the [particulars withheld] Children's Centre by one **J W** who is the Director of [particulars withheld]. On 7th July 2005 when she was approximately 3 years old. That the said **J W** informed them that the child was born on 1st September 2002 to **P M** and **H M**, both deceased, leaving the child orphaned. That the child was HIV positive, which was confirmed upon tests done at the [particulars withheld] Children's Home upon the child being admitted. That the child was known to [particulars withheld] through her birth mother, who was employed in [particulars withheld]. Crafting project prior to her death. That the child has been with them since October 2009 when they took her into their custody from the Grace Children's Home. That the child is in Standard 3 at [particulars withheld] That they have been meeting all the child's needs and they are in a stable financial position and have adequate resources to continue taking care of her. That they have three other biological children and that they have previously successfully adopted three other children. That all 6 children have bonded well with the child and indeed she has been part of their family since October 2009 and that **P H W** and **J W** have consented to be the Legal guardians of the child in the event that they die before the child attains the age of majority.

3. Child Welfare Society of Kenya filed their report dated the 10/9/2014. According to the said report **V W (child)** was born in Kiambu District on the 1st of September 2002 to her late mother **H N M** who passed on 18th May 2005 at Mbagathi District Hospital. Since the mother had no known blood relative the body remained in mortuary for a month with no one claiming it. The body ended up being disposed by the City Council Nairobi. Child Welfare made a follow up on the case and found out that the biological father to Baby **V** (Mr. [particulars withheld] passed on in 2005 from HIV/AIDS complications. Both the baby and her mother had been chased away by the [particulars withheld] family even before he passed on. Upon the death of the child's mother [particulars withheld] took the child in. They later referred her to Grace Children Centre for custody. They made efforts to trace the child's relatives. The office was able to trace the child's grandmother who is the closest known blood relative to the child. The grandmother resides in [particulars withheld] Slums and has no objection to the child being adopted by the applicants. Despite being taken through both legal and psycho-social implications of offering her granddaughter for adoption, the grandmother went ahead and consented to the adoption process. She argued that she was advanced in age and that she was a widow, not to mention that she had not seen the child since 2005. These reasons made it difficult for her to want to live with the child. In addition she stated that she could

not afford to provide medical and health related attention to the child, given that the child is currently on therapy. She also added that the child, having been under close and sufficient care and protection of the applicants for the last eight years, she had no objection towards the applicants adopting the child.

4. After demise of her mother the baby was formally admitted to Grace Children's Home, Langata on 7th July 2005. Later on 16th July 2012 through the Senior Resident Magistrate Court, Nairobi. The child was committed to the same home (Grace Children's Home) under care and protection Order no. 269 of 2012. V. (11) is living with HIV and was in class four at [particulars withheld] at the time the report was written. The child was declared free for adoption on the 15th May 2014.

5. Child Welfare Society of Kenya noted that the case is a Pre- placement matter where the child on 1st of July 2005 was taken in by the applicants before they applied for adoption. This is a special case where the child was placed with the applicants on foster care; which she has been in for eight years due to her special needs. She has been accessing comprehensive care and treatment through the applicants since then. She is living with a life – long condition that requires constant care and medical attention for the rest of her life. Moreover she is a total orphan. It is now over eight years since the child was orphaned hence she is in need of family care and protection. They therefore declare V.W free for adoption under article 119 (1) (a) of the children Act, 2001 which qualifies orphaned children as being in need of alternative care and protection. In addition, and in line with section 158 (4) (a) of the same Act which allows for consent from family relative, the grandmother as the known relative has consented to this adoption.

6. This is a special case of adoption. I note that at the time the application was made in 2104 the applicants were ages 66 and 65 respectively. Section 158 (2) provides that if the court is satisfied that there are special circumstances that justify the making of an adoption order, then it can allow applicants who have attained the age of 65 to adopt The applicants though foreigners are resident in Kenya. They have been resident since April 1985 and are still resident in Kenya. The child was placed with the applicants before the moratorium was declared. This court must look at the child's best interest. The applicants have had the child for over eight years. The applicants have been only the persons she knows as parents and who care for her. The child's parents are deceased and her grandmother is not able to take care of her. There is evidence that the applicants have taken her into their home and treats her as their own child. They have previously adopted three other children before who have bonded well with their own biological children. This court therefore finds the applicants are best suited to adopt the child in this matter.

7. This court therefore authorizes **D E H** and **J M H** to adopt **V W** (child). The names of the infant shall change from **V W to V W H P H W** and **J W** shall be the Legal guardians of the child in the event that the applicants die before the child attains the age of majority. The Registrar General shall make entries in the Adopted Children's Register. The child shall be presumed to be a Kenyan having been born in Kenya. It is so ordered.

Dated signed and delivered this **24th of** day **February 2017**.

R.OUGO

JUDGE

In the presence of:

Absent For the Applicants

M/s Charity Court/ clerk