



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.220 OF 2015

IN THE MATTER OF THE CHILDREN ACT NUMBER 8 OF 2001

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF S L aka A I (CHILD)

F M M

T W N.....APPLICANTS

JUDGMENT

1. By an Originating Summons dated 31<sup>ST</sup> July 2015 the applicants **F M M** hereinafter referred to as the 1<sup>st</sup> applicant and **T W N** seek to be authorized to adopt the child **S L aka A I** hereinafter referred to as a child and if the adoption is allowed the child to be known as **A W M** and that the Registrar General do make the appropriate entry of **A W M** in the Adopted Children's Register. That the child be presumed to be a Kenyan Citizen born in Kenya on 23<sup>rd</sup> May 2011 and that the Director of Immigration Services do issue the child **A W M** with a Kenyan passport. That **S M M** be appointed legal guardian of the child.

2. The applicants were born in 1969 and 1970 respectively. They got married on the 12<sup>th</sup> September 2012 and are still married. The 1<sup>st</sup> applicant is a *[particulars withheld]* salesman and the 2<sup>nd</sup> applicant runs a business in finished leather products in *[particulars withheld]* market. Both are Kenyan Citizens and are Christians. They are in good health and have been with the child since 6<sup>th</sup> June 2012.

3. The report from Child Welfare dated 19<sup>th</sup> December 2014 indicates that the child baby **S L L** was born to **S L L** on 23<sup>rd</sup> May 2011 at *[particulars withheld]* The mother of the child visited Child Welfare Society of Kenya on 3<sup>rd</sup> May 2011 with an aim of offering the child for adoption. Being a student and with no national identity card, she was accompanied by her grandmother **R L L** of ID. No. *[Particulars withheld]*, who acted as her guardian. They explained that the baby was born of an incestuous relationship with her first cousin hence it was a taboo child according to their culture, she further added that the father had denied paternity. The birth family, **S L** and the guardian were counseled and informed on the legal and psycho-social implications of offering a child for adoption despite this informed counseling, the mother went ahead and filled the initial mother offer forms. She was advised to return to Child Welfare Society of Kenya after delivery to give final consent to either offer the baby for adoption or take the child and assume full parental responsibility. After delivery and discharge from the maternity hospital on the same day (23.05.2011) the new born through CWSK was taken to Imani Children's Home for Comprehensive care and protection. On 14<sup>th</sup> June 2012, through the Senior Magistrates Children's Court, Nairobi, the child was committed to the same place of safety (Imani Children's Home) for temporary care under protection and care order no. *[particulars withheld]*. On the 24<sup>th</sup> August 2011 and after lapse of six weeks, the mother (**S L**) and her guardian gave their final consent to offer the child for adoption. The child was placed with the applicants on the 6<sup>th</sup> June 2012. The report recommends that adoption would be in the best interest of the child in line with the provisions of the Africa Charter on the rights and welfare of the child, Article 25(1) which stipulates that, "**any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance.**"

4. The report from the Director of Children Services dated 20<sup>th</sup> November 2016 recommends the adoption. Their observation is that the applicants are responsible, mature and financially capable to

provide for the child. They have a wider family and social support and that they should be hopefully there to see the child through childhood. That the applicants have met the legal requirement and the adoption is recommended.

5. The Guardian ad litem, A W N in her report dated 16<sup>th</sup> June 2017 too recommends the adoption. She observed that the applicants dedicated as parents and have provided a stable environment for the child who is currently in school and is thriving well as a child

6. This court had a chance to interview the applicants in Court on the 27<sup>th</sup> July 2017. The 1<sup>st</sup> applicant is 48 years old and desires to adopt the child. The 2<sup>nd</sup> applicant is currently 47 years old she too desires the child and stated that they have bonded very well.

7. The child in this cause was given up for adoption as narrated in the Child Welfare report and Director of Children's Service. Her birth mother S L L offered the child for adoption as the child was born out of incestuous relationship. I am persuaded that the birth mother was taken through the process of offering her child up for adoption. She signed the form offering the child for adoption on the 3<sup>rd</sup> of May 2011. Since then she has not had contact with the child. The child was declared free for adoption on the 5<sup>th</sup> June 2012 and the applicants have had her since 6<sup>th</sup> June 2012. The applicants are within the age required to adopt. They have fulfilled all the legal requirements on the adoption process and every report on them recommends the adoption. They love the child and have given her home and care for her. I find that it is in the best interest of the child to grant the orders sought. This court authorizes **F M M** and **T W N** to adopt the child **S L aka A I**. The child shall be known as **A W M**. I direct the Registrar General to enter this order in the adoption register. **S M M** shall be the Legal Guardian of the Child in case of incapacitation or death of either or both of the applicants. The child was born in Kenya and is therefore a Kenyan by birth and is entitled all the rights that accrue to Kenyan citizens under the Kenya Constitution 2010 and the Kenya citizenship and Immigration Act. I hereby discharge the Guardian ad litem. It is so ordered.

**Dated , signed and delivered this 28<sup>th</sup> Day of September 2017.**

**R. E. OUGO**

**JUDGE**

In the presence of:

**Mr. Okinyo For the Applicants**

**Ms. Charity Court Clerk**