



**\REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ADOPTION CAUSE NO. 210 OF 2015**  
**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF BABY BB**

**TMG .....1<sup>ST</sup> APPLICANT**

**AWN ..... 2<sup>ND</sup> APPLICANT**

**JUDGMENT**

**INTRODUCTION**

TMG and AWN (hereafter ‘the Applicants’) have filed an Originating Summons Application dated 22<sup>nd</sup> January, 2016 in which they seek the following orders:

- 1. That the Applicants, TMG and AWN be and are hereby authorized to adopt Baby BB, and the child be called IGM henceforth.***
- 2. That SGM and IWM be and are hereby appointed legal guardians of the child in the event a misfortune befalls the Applicants rendering them unavailable or incapable of taking care of the child.***
- 3. That the Registrar General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register in respect of IGM.***
- 4. That IGM was born in Kenya and is presumed to be a Kenyan citizen by birth, and he is entitled to a Kenyan passport.***

**THE APPLICANTS’ CASE**

In their Written Statement dated 28<sup>th</sup> August, 2015, the Applicants asserted that they are both Kenyan citizens and they reside in Nairobi. That the 1<sup>st</sup> Applicant was born in 1970 and the 2<sup>nd</sup> Applicant was born in 1972.

That they got married on 14<sup>th</sup> August, 2004 but their marriage has never been blessed with any children. It was their averment that they are Christians, they have no previous criminal records or pending criminal prosecution and that they are both in general good health and do not indulge in drugs or alcohol.

The Applicants stated further that the 1<sup>st</sup> Applicant is a Senior Supervisor at [Particulars Withheld] Hotel while the 2<sup>nd</sup> Applicant is a Quality Assurance Manager at [Particulars Withheld] Services. Further, that they have sufficient family income to enable them take care of the child and in any event, they have been taking care of him.

They also stated that the child has not received or agreed, and no person has made or given or agreed to make to them any payment or reward in consideration of the proposed adoption and they have never made any such Application in regard to the child in any Court.

## **DETERMINATION**

The main issue for determination is whether the Applicants have fulfilled the criteria to warrant the grant of the adoption and the orders sought in the present Application. In that regard, **Part XII** of the **Children Act, 2001** prescribes the guidelines and threshold to be met by an Applicant in Applications such as the present one.

The instant Application is by a married couple and hence it is an Application lodged jointly as per the **Children Act** which at **Section 158 (1)** provides that:

*An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants-*

*a. Has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or*

*b. Is a relative of the child; or*

*c. Is the mother or father of the child.*

Applying the **Children Act, 2001** to the present matter, the child was found abandoned at Naromoru Dispensary on 14<sup>th</sup> August, 2013. The matter was reported to Naromoru Police Station where it was recorded as OB No. [Particulars Withheld]. The child was admitted to New Life Home Trust on 28<sup>th</sup> October, 2014 by the Nanyuki Chief Magistrate's Court vide **Protection and Care Case No. 98 of 2013**. Since the incident was reported, no one has appeared claiming the child. This fact is further fortified by the Final Report dated 17<sup>th</sup> February, 2014 prepared by the OCS Naromoru Police Station which confirms that since the child was abandoned, nobody has since claimed parentage or raised any issue in regard to the child. As it stands therefore, the child is in need of alternative care and parental attention in a family environment.

Based on the material before the Court, the Applicants were assessed by the *guardian ad litem*, JMM, and Little Angels Network and were found to be suitable to adopt the child herein. According to the materials availed, the Applicants are financially and socially capable of providing for the child's needs.

The Little Angels Case Committee sitting on 5<sup>th</sup> February, 2014 assessed the Applicants' case and approved that the Applicants do adopt the child herein. Furthermore, the Committee found the Applicants suitable to adopt the child and issued a Certificate declaring the child free for adoption.

One, SGM and IWN have both consented to being the child's legal guardian, as per their Letters of Consent presented to the Court, in the event that anything happens to the Applicants thereby rendering them unable to take care of the child.

According to the Children's Officer's Report of 20<sup>th</sup> May, 2016, the Applicants have fulfilled the legal requirements for adoption and have proved capable of taking on parental responsibility over the child in this matter during the statutory placement period prior to the adoption during which he has been under their continuous care and control. Further, they are physically and mentally fit and can be entrusted with

the minor for adoption and they are financially capable of bringing up the minor as they both have stable sources of income. The Report further indicates that the child has bonded well with the Applicants and the home environment in which he is being raised in is conducive.

The Court finds that the Applicants have met the criteria of local adoptions and it would be in the child's best interest if he was adopted. The Court also notes that they are of good moral standing as evidenced by the Certificates of Good Conduct availed herein. The Court therefore holds that the Applicants shall assume the responsibilities of parenthood and the child shall be entitled to inherit from the property of the Applicants and furthermore, he shall not be given up because of any eventualities that might result.

In conclusion, the Court notes that it is in the best interest of the child herein that he be placed under the care and custody of the Applicants as he is going to have a home and a family with a secured future, with his education and wellbeing safeguarded.

### **DISPOSITION**

The Applicants, TMG and AWN, are hereby authorized to adopt the child, BB. The child shall henceforth be known as IGM. He is therefore presumed to be a Kenyan Citizen by birth and thereby accorded all the entitlements of a Kenyan citizen. SGM and IWN are hereby appointed to be the legal guardians of the child should any misfortune befall the Applicants. The Registrar General is hereby directed to enter this order in the Adoption Register. The *guardian ad litem*, JMM, is hereby discharged. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 8<sup>TH</sup> DAY OF DECEMBER, 2016**

**M. W. MUIGAI**

**JUDGE**

**In the presence of:**