

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO.95 OF 2010

**IN THE MATTER OF THE CHILDREN ACT, 2001
AND**

IN THE MATTER OF L.W.M (MINOR)

E.N.K.....

.....1ST APPLICANT

C.W.K.....

.....2ND APPLICANT

J U D G M E N T

The applicants, E.N.K and C.W.K, are husband and wife. They were married in Hennepin County Minnesota in the United States of America on 29th July 2005. The applicants have been residents in the United States of America since 2002. The applicants are Kenyan citizens but are gainfully employed in the United States of America. The 2nd applicant is the sister to E.M.M, the mother of L. W. M (the child) who is proposed to be adopted by the applicants. The 2nd applicant has taken care of the child since she was born. The biological mother of the child left the custody of the child under the care of the 2nd applicant because she was financially unable to take care of the child. Even after re-locating to the United States of America, the 2nd applicant with her husband, the 1st applicant, has continued providing financial support for the upkeep of the child. The child is now aged about fifteen (15) years. She is a form 2 student in a girls' boarding school in Central Province. She has given her consent to be adopted by applicants. Her biological mother, as well as her two (2) siblings, have similarly given their consent to the proposed adoption. Kenya Children's Home, a duly approved adoption society

issued a certificate on 15th December 2009 declaring the child free for adoption. It was apparent to the court that, even though the applicants have not lived with the child during the whole period from the time the adoption proceedings commenced, the applicants have provided financial support for the upkeep and education of the child. The proposed adoption is an adoption within the family set up.

The applicants were assessed by Kenya Children's Home, an adoption society and by the Director of Children's Services. The two organizations recommend the application by the applicants to adopt the child. E.W.N, the guardian ad litem, also prepared a report which is favourable and recommends the adoption. The applicants were assessed by Summit Adoption Home Studies, Inc an adoption society based at St. Paul, Minnesota, United States of America. They formed the opinion that the applicants had fulfilled the legal requirements of the United States of America to enable them adopt the child. The applicants were approved by the National Adoption Committee of the Republic of Kenya to adopt the child. A certificate to that effect was issued on 18th May 2010.

This is an international adoption. As stated earlier in this judgment, the applicants are married couple who have expressed their wish to adopt a female child. The proposed adoption is within the family set up. The 2nd applicant is the aunt to the child. The applicants are Kenyan citizens by birth. They however reside in the United States of America where they are currently working in their chosen professions. This court is of the view that they have established that they have the financial and emotional capability and capacity to take care of the child. It was evident to the court that the child considers the applicants, especially the 2nd applicant, as the person who has assumed parental responsibilities in regard to her education and upkeep. The child considers the applicants to be her parents. All the relevant agencies have recommended the adoption. This court is of the view that the applicants have fulfilled all the legal requirements for an international adoption.

This court formed the opinion that it would be in the best interest of the child for the child to be adopted by the applicants. The applicants

will provide a home and a family for the child to grow up and be a useful member of the society. The applicants will be required to execute an undertaking that they shall assume all the parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if she was born to them in their marriage; they have been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that they shall adopt; that the child shall have the right to inherit their property; that an adoption order cannot be recanted, and further, that they shall not give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

The court will therefore allow the applicants' application to adopt the child. They have fulfilled the legal conditions for local adoptions by a married couple. The applicants, E.N.K and C.W.K, are hereby allowed to adopt L.W.M. Henceforth, the child shall be known by the name L.W.K. R.M.M shall be the legal guardian of the child should misfortune befall the applicants. The Registrar General is hereby directed to enter this adoption order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 25TH DAY OF FEBRUARY, 2011

L. KIMARU
JUDGE