



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Adoption Cause 123 of 2006

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF PWW (A CHILD)

CONSOLIDATED WITH

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.124 OF 2006

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF GWW (A CHILD)

JUDGMENT

By identical originating summonses dated 16th August, 2006 and filed on 28th August, 2006 stated to be brought under sections 158, 159 and 160 of the Children Act, 2001; section 24 of the Interpretation and General Provisions Act, Cap.2; and section 3A of the Civil Procedure Act, Cap. 21, EMK and GWM of P.O. Box *[particulars withheld]*, United States of America (USA), *inter alia*, applied for the following substantive orders, namely:-

1. THAT the applicants be authorized to adopt PWW, to be known as PWWK.
2. THAT the applicants be authorized to adopt GWW, to be known as GWWK.

The applicants were represented at the hearing of their applications on 27th April, 2007 by learned counsel, Mrs R.W. Mbanya.

Salient facts pertaining to the applications may be summarized as under.

Both applicants were originally of Kenyan nationality and citizenship and are of the African race but have been residing and working for gain in the USA since the year 2000. They are husband and wife, respectively, having contracted a statutory marriage on 24th July, 1998 at the Registra's Office, Nairobi under the Marriage Act, Cap.150. The 1st applicant, EMK became a naturalized US citizen in October,

2005 while the 2nd applicant, GWM who seems to be aspiring to become a naturalized US citizen still remains a Kenyan Citizen. The 1st applicant was born in South Kinangop while the 2nd applicant was born in Githunguri, Kenya. The 1st applicant is a businessman while the 2nd applicant is a nurse.

The children to be adopted are the applicants' granddaughters, being twin daughters of the applicants' late daughter PWM who got the said children out of wedlock. The biological father of the children is unknown. The children's mother died on 5th March, 1995 when the children were about 5 years old whereupon the applicants substantively assumed the role of parenting the said children for the succeeding 5 years at the applicants' Limuru home until the applicants relocated to the USA in search of greener pastures. The applicants have since relocating to the USA been trying to get the children to move over to the USA to join them as their dependants without success and the applicants now seek to achieve re-union with the children through the adoption process subject matter of the present proceedings.

The 1st applicant, EMK was born on 12th March, 1945 and is aged around 62 years while the 2nd applicant, GWM was born on 14th May, 1948 and is aged around 59 years. The children, who are twins, were born on 9th May, 1990 and are now aged around 16 years. Section 158 (1) (a) of the Children Act is to the effect that for the applicants to qualify as adoptive parents, at least one of them should have attained the age of 25 years and be at least 21 years older than the children but should not have attained the age of 65 years. These statutory age requirements have been met.

Regulation 19 (d) of the Children (Adoption) Regulations, 2005 (Legal Notice No. 43 of 2005) requires adopters, in the case of joint applicants, to have been married for at least 3 years prior to the date of commencement of adoption arrangements. As the applicants herein contracted a statutory marriage on 24th July, 1998, i.e. about 9 years ago and still remain so married, the requirements of this regulation have been met.

The children's late single mother used to work in Mombasa before she fell ill and died. She had left the children under the physical care of the applicants soon after birth. After the children's mother died on 5th March, 1995, the children remained under the applicants' substantive care for about 5 years until the applicants won a green card lottery and relocated to the USA in the year 2000. The applicants left the children behind under the care of the children's aunt, PWM who continued to physically look after them at the applicants home in Limuru, Kenya while the applicants continued to provide necessary financial support for the children. In her report dated 21st November, 2006, the *guardian ad litem*, JWN who reports having grown up in the same neighbourhood with the applicants has recorded that the 2nd applicant, GWM travels back to Kenya two or three times a year 'to check on the girls' (the children). The *guardian ad litem* recommends the proposed adoption.

The Child Welfare Society of Kenya, a registered adoption society in Kenya, has declared the children free for adoption as required by law.

A home study report co-authored, *inter alia*, by A. Dawson, Licensed Social Worker of Texas State and witnessed by Amy M. Ball, Notary Public in Texas on 18th May, 2006 is to the effect that the applicants' home in Texas was approved in 2004 as suitable for upbringing of children.

The Director, Children's Services, Kenya investigated the applicants' fitness or otherwise to adopt the children in question and filed a report dated 17th April, 2007 on 18th April, 2007. The report shows that only the 2nd applicant, GWM was interviewed and assessed by the Directorate regarding the proposed adoptions but not the 1st applicant, EMK. The 1st applicant, however, donated a power of attorney sworn on 29th April, 2006 and commissioned before a Notary Public for the State of Texas the same day authorizing the 2nd applicant to carry through and complete the proposed adoption on his behalf and hers. The children sought to be adopted are girls now aged 16 years and the 2nd applicant who is their maternal grandmother is the one who has been physically pursuing their proposed adoption. Both applicants are, however, for the proposed adoption, which also has the support of other family members. The Director

recommends the proposed adoption.

The applicants profess Christianity and intend to bring up the children in the same religion.

Among annexures to the adoption application is a testimonial from Bernard C. Nwaiwu, P.C., Attorneys and Counselors at Law of Dallas, Texas to the effect that an adoption legally completed in Kenya by a Court of competent jurisdiction will be given legal recognition under the laws of the State of Texas. That testimonial is not dated and one cannot be too sure if it is current or not. I shall give it the benefit of doubt and reluctantly accept it.

The proposed adoption is within the family and although the 1st applicant is now a naturalized citizen of the USA, his wife the 2nd applicant still remains a Kenyan. Thus if the adoption is authorized, the children expect dependency benefits in the USA from the 1st applicant's naturalized US citizenship status upon relocating there.

Section 158 (4) (f) of the Children Act provides that if the child to be adopted has attained the age of 14 years, such child should give consent to his/her proposed adoption. The children in the present case are over 16 years of age and will turn 17 in roughly one week's time. They have duly consented to their proposed adoption by the applicants.

I am satisfied on evidence tendered before the Court that the applicants meet the legal requirements and social parameters for adoptive parents; that the applicants are fit and proper persons to adopt the children; and that it is in the children's best interests to be adopted by the applicants. The proposed adoptions straddle the boundary between a local adoption and an international adoption. I take cognisance of the fact that the intention of the proposed adoptions is to facilitate the children's relocation to the USA to be re-united with their grandparents the applicants as the latter's dependants. Accordingly, I make an order under sections 154 and 162 of the children Act, 2001 authorising the applicants, EMK and GWM to adopt:-

1. PWW who shall henceforth be known as PWWK.
2. GWW who shall henceforth be known as GWWK.

The Registrar-General, Kenya is directed to make appropriate entries in the Adopted Children Register as required by law.

Orders accordingly.

Delivered at Nairobi this 3rd day of May, 2007.

B.P. KUBO

JUDGE