



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

**ADOPTION CAUSE 107 OF 2001**

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

**AND**

**IN THE MATTER OF KW ( A CHILD)**

**CONSOLIDATED WITH**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO.108 OF 2007**

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

**AND**

**IN THE MATTER OF MN ( A CHILD)**

**JUDGMENT**

By originating summonses dated 17<sup>th</sup> July, 2007 both stated to be brought under sections 154; 156; 158 (1), 4 (a); 160; 163; 164 and 170 of the Children Act, 2001 and section 22 of the Interpretation and General Provisions Act, Cap.2, RWW and DBT of Post Office Box Number [PARTICULARS WITHHELD], USA applied, *inter alia*, for the following orders, namely:-

- a) That the applicants be authorized to adopt KW, to be known as KWT.
- b) That the applicants be authorized to adopt MN, to be known as M NT.

The applicants were represented in the above two causes by learned counsel, Mr J. Mwenda.

The two causes were consolidated and heard together since the applicants are the same as is also the *guardian ad litem*.

Salient facts pertaining to the causes may be summarised as under.

The applicants are wife and husband, respectively, having got married to each other in the County of Cook, State of Illinois in the United States of America (USA) on 11<sup>th</sup> May, 2004, i.e. they have been married for about 3½ years. Regulation 19 (d) of the Children (Adoption) Regulations, 2005, being Legal Notice No.43 of 2005, is to the effect that adopters, in the case of joint applicants, should have been married for at least 3 years prior to the date of commencement of adoption arrangements. This requirement has been met.

The 1<sup>st</sup> applicant, RWW was born in Kenya on 12<sup>th</sup> December, 1975 and is aged around 32 years. She migrated to the USA in 2002 and works as a certified Nurse Assistant there. Her marriage to the 2<sup>nd</sup> applicant is her first marriage. She has no biological child or children. The 2<sup>nd</sup> applicant, DBT was born in the USA on 28<sup>th</sup> September, 1946 and is aged around 61 years. He is a Social Worker in the USA, which is his country of origin and residence. His marriage to the 1<sup>st</sup> applicant is his third marriage, his previous two marriages having ended up in divorce. The 2<sup>nd</sup> applicant and his first wife got one son now aged around 36 years who is married with children. The child to be

adopted under adoption cause 107 of 2007, KW, a Kenyan boy, was born on 2<sup>nd</sup> February, 2001 and is aged around 7 years. The child to be adopted under adoption cause 108 of 2007, MN, a Kenyan girl, was born on 23<sup>rd</sup> July, 1998 and is aged around 9 years. Section 158 (1) (a) of the Children Act is to the effect that for the applicants to qualify as adoptive parents, they or at least one of them should have attained the age of 25 years and be at least 21 years older than the child but should not have attained the age of 65 years. These statutory age requirements have been met.

The two children to be adopted were born of TNW of Thika in Kenya. In her affidavit sworn on 23<sup>rd</sup> January, 2007 giving consent to the proposed adoption of the two children by the 1<sup>st</sup> applicant, who is her elder sister, and the 2<sup>nd</sup> applicant, who is the latter's husband, the said TNW deponed that she conceived the two children while she was unmarried and that she does not herself know the children's biological fathers. T added that she is still unmarried; that she is poor and has been relying on well-wishers and her sisters for the upkeep and the upkeep of the children; that the children have been living with her sisters away from her parents' home because of hostility from her brothers who have evicted her and the children from her parents' home; that the children would very much like to live with the 1<sup>st</sup> applicant with whom they enjoy a warm relationship whenever she is with them; that she has not consented to the children's aforesaid proposed adoption merely because of her poverty but rather out of desire to have the children settled and have a permanent home as opposed to the current situation where she and the said children are always on the move.

Little Angels Network, a registered adoption society in Kenya, evaluated and assessed the children and the applicants as required by section 157 (1) of the Children Act and came to the conclusion that the proposed adoption would be in the children's best interests. The society declared the children free for adoption.

Adoption – Link, an adoption society in the USA, conducted a home study on the applicants and found them suitable as adoptive parents.

Carolina Adoption Services, also in the USA, has undertaken to conduct post – adoption assessment of the applicants and the children once the applicants go back to the USA with the children.

The 2<sup>nd</sup> applicant's daughter, SG and her husband, SG of [PARTICULARS WITHHELD] have consented to act as the children's legal guardians should the applicants die or become incapacitated before the children attain majority age.

The *guardian ad litem*, MMM has recommended the proposed adoption.

Kenya's Director of Children's Services has reported that bonding has taken place between the applicants and the children and the said Director has recommended the proposed adoption.

Adoption – Link of USA which compiled a home study report on the applicants made favourable comments about them as prospective adoptive parents. The 2<sup>nd</sup> applicant currently earns a salary of US\$110,000 annually while the 1<sup>st</sup> applicant earns a salary of US\$23,400 annually, totaling US\$133,400 annually, which works out at the equivalent of approximately Kshs.778,000/= per month at an average exchange rate of Kshs.70/= to the US\$. The applicants' total assets have been given as US\$582,200 against total liabilities of US\$ 342,767, i.e. the applicants have overall net assets of US\$239,433.

I am satisfied on evidence tendered before court that the applicants meet the legal requirements and social parameters for adoptive parents; that the applicants have requisite sources to cater for the needs of the children; 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. I note that although the 1<sup>st</sup> applicant is of Kenyan origin, she has lived in the USA since 2002, that she still lives and works for gain in the USA and is married to the 2<sup>nd</sup> applicant who is a US citizen who also resides and works for gain in the USA. The applicants have applied for international adoption orders, which they qualify for. Accordingly, I hereby make international orders under section 162 of the Children Act, 2001 authorising the applicants, RWW and DBT:-

1. To adopt KEVIN WAMBUI who shall henceforth be known as KWT.
2. To adopt MARY NDUNGE who shall henceforth be known as MNT.

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 14<sup>th</sup> day of December, 2007**

**B.P. KUBO**

**JUDGE**