



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

**Adoption Cause 190 of 2004**

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

**J U D G M E N T**

By originating summons dated 23.09.04 and filed on 24.10.04 brought under sections 157 and 160 of the Children Act, 2001 and Legal Notice No. 75 of 2002, the applicants CMM and GG applied for orders the substantive of which is contained at prayer 3, to wit:

**‘3. That the applicants CMM and GG be authorized to adopt the minor/child SW born on 31<sup>st</sup> January 2004 and the said minor/child be known henceforth as CWG.’**

After various formalities, the cause eventually came up for hearing before me on 17.02.06

The following emerges from evidence in the court file:- Applicant GG was born on 22.06.61, which puts his age at ground 45 years as at the time of institution of these adoption proceedings. Applicant CMM was born on 12.12.70, which puts her age at around 36 years as at the time of institution of these adoption proceedings. The child, a girl, was born on 31.01.04, which puts her age at around 10 months (less than 1 year) as at the time of institution of these adoption proceedings. Section 158(1) of the Children Act 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 has attained the age of 25 years and is at least 21 years older than the child but has not attained the age of 65 years. The age requirements have been met.

There is in the court file an order issued on 23.05.05 by the Chief Magistrate’s Court at Milimani Commercial Courts, Nairobi which declares that the applicants:

**‘... have fulfilled all rites, customs and traditions necessary under the Kikuyu customary law to solemnize a valid customary marriage (and) that the said parties are legally married under Kikuyu customary law.’**

The Kikuyu of Kenya are one of the African races of the Republic of Kenya. The court is by virtue of section 3(2) of the Judicature Act (Cap.8) vested with power to apply African Customary Law in civil cases in which one or more of the parties is subject to or affected by it. Records in the file show that the applicants are both of Kenyan nationality and of Kikuyu tribe and have cohabited since early 2001, i.e for over 3 years as at the time of institution of the present adoption proceedings. I am satisfied that the applicants qualify to be adoptive parents.

The child was abandoned in Kayole, Nairobi the same day she was born. She was found by members of the public who reported the matter to Kayole Police Post whose officers escorted the child to Kenyatta National Hospital the same day. Later the child was by order of the Senior Resident Magistrate's Children's Court, Nairobi issued on 28.06.05 committed to the care or custody of the Abandoned Baby Centre and eventually the said child was placed in the foster care of the applicants on 14.05.04 and has been under the applicants' foster care since.

The biological mother of the child behaved disgracefully in abandoning the helpless child and the said mother should be thoroughly ashamed of herself. Commendations go to the members of the public who took the initiative to report the matter to the Kenya Police and to the Police, Kenyatta National Hospital, the Abandoned Baby Centre, the Children's Court and finally the applicants for their respective patriotic acts of playing their respective roles in ensuring the survival of the child.

Section 157(1) of the Children Act plus the proviso thereto requires that the child should have been in the continuous care and control of the applicants within the Republic for a period of 3 consecutive months preceding the filing of the adoption application and that the applicants and the child be evaluated and assessed by a registered adoption society in Kenya. These legal requirements have been fulfilled. The child was abandoned and has not been claimed for over 6 months. The Child Welfare Society of Kenya, a registered adoption society at the material time, has declared the child free for adoption. This court finds that the child is indeed free for adoption.

Applicant GG is a legal practitioner while applicant CMM is an accountant. Their combined income is reported to be over Kshs.150,000/= per month. Applicant GG has a son aged about 8 years from a previous marriage which was dissolved by a court order. Applicant CMM has no child. The applicants have not had children of their own together for biological reasons. They are desirous of having a daughter and have opted for the adoption route to attain that objective. Documents in the file indicate that the applicants have been contemplating formalizing their union and obtaining official documents to formalize the said union into a statutory marriage. This is a good precaution for purposes of cementing the applicants' union and it is highly advisable for them to formalize their union in the shortest time possible.

There is a favourable report on the applicants by the guardian *ad litem*. A report by the Children's Department, too, speaks well of the applicants and recommends the adoption applied for as being in the best interests of the child. Applicants' relatives support the proposed adoption. I am persuaded that adoption of the child by the applicants would be in the child's best interests.

All in all, I am satisfied that the requirements of Part XII of the Children Act, 2001 relating to adoption have been met. Accordingly, I hereby make an order pursuant to section 154(1) of the Children Act:-

**Authorizing the applicants, GG and CMM to adopt the child SW who shall henceforth be known as CWG.**

I also order that costs shall be in the cause. The Registrar-General, Kenya is directed to make appropriate entries in the Adopted Children Register accordingly.

Delivered at Nairobi this 17<sup>th</sup> day of March, 2006.

**B.P. KUBO**

JUDGE