



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

Adoption Cause 10 of 2005

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF CM (A CHILD)

JUDGMENT

By originating summons dated 04.02.05 and filed the same day, LWG and SMWM applied, *inter alia*, for the following substantive orders:-

- a) That the applicants LWG and SMWM be authorized to adopt the child CM.
- b) That upon adoption the child be known as CGW

The applicants were represented in the adoption proceedings by learned counsel, Mr. T.W. Njuguna.

The application is stated to be brought under Order XXXVI rules 1, and 2 of the Civil Procedure Rules, section 154 'rules 1 & 2', sections 156, 157, 159 & 160 of Part XII of the Children Act, No.8 of 2001, Laws of Kenya and section 3A of 'Civil Procedure Rules'. I am constrained to make the under mentioned observations regarding some of the legal provisions cited. Firstly, Order XXXVI rules 1 and 2 relate to originating summons in the context of administration of estates of deceased persons. I do not see the relevance of the cited rules to this cause and I ignore them. Secondly, there is reference to section 154 'rules 1 & 2'. If this reference is to the Children Act, 2001, as I think it must be, it should be noted that there are no rules 1 and 2 attached to section 154 of the Act. I shall also ignore the reference to rules 1 and 2 in the context of section 154 of the Children Act. Thirdly, there is reference to section 3A of 'Civil Procedure Rules'. There does exist section 3A in the Civil Procedure Act (Cap.21) itself, but there is no such thing as section 3A of 'Civil Procedure Rules'. Careless mistakes like the above on the part of counsel can easily paint a negative image of the counsel concerned and should be avoided.

The substantive aspects of the application may be summarized as per ensuing paragraphs.

The applicants are Kenyans of the African race and are husband and wife, respectively, having got married on 06.09.97 at Stima Club Rwaraka, Nairobi under the Marriage Act (Cap. 150). The 1st applicant, LWG was born on 14.04.71 and is now aged around 35 years. The 2nd applicant, SMWM was born on 08.09.70 and is now aged around 36 years. The child to be adopted was born on 15.07.03 and is now aged around 3 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. The statutory age requirements have been met in this case.

The 1st applicant is an Engineer while the 2nd applicant is a businesswoman. It is reported that the 1st applicant brings home a net monthly income of between Kshs,80,000/= and Kshs.90,000/= while the 2nd applicant earns between Kshs.10,000/= and Kshs.50,000/= per month from her hair saloon business. The applicants have one biological child, a son called W, aged around 6 years and it is their desire to add the child subject matter of these adoption proceedings to their family.

Records in the court file show that the child to be adopted, CM alias Baby IM, a Kenyan girl of the African race, was born at Kakamega Provincial Hospital on 15.07.03 and abandoned there by her biological mother on 29.07.03. On 13.08.03 the child was admitted to New Life Home, Kisumu and transferred to New Life Home, Kilimani, Nairobi on 08.09.03. A formal order committing the child to New Life Home, Nairobi was issued by the Senior Resident Magistrate's Children's Court, Nairobi on 21.09.05. The child has not been claimed by her biological parents or relatives. The child was received into the applicants' care and possession on 28.02.04 and has been in the applicants' foster care since. Bonding between the child to be adopted, the applicants and their biological son is reported to have taken place. New Life Home has consented to the child's adoption by the applicants.

Little Angels Network, a registered adoption society in Kenya, has declared the subject child free for adoption as required by law. The Children's Department recommends the proposed adoption.

Since no biological parents or relatives have claimed the child, their consent to the proposed adoption is hereby dispensed with.

Regarding inheritance rights, the report of the Director, Children's Services dated 26.04.06 records as follows:-

'The applicants are aware of Carla's right of inheritance. They say they have always and will continue to treat her as their child; with all inheritance rights like Wayne their biological child and any other biological child who they hope to get so soon.'

I am satisfied on evidence availed to me that the applicants meet the legal and social parameters for adoptive parents; that they are fit and proper persons to adopt the child in question; and that it is in the child's best interests to be adopted by the applicants. Accordingly, I hereby make an order pursuant to Section 154(1) of the Children Act, 2001 authorizing the applicants, **LWG and SMWM** to adopt the child, **CM** who shall henceforth be known as **CGW**. The Registrar – General is directed to make appropriate entries in the Adopted Children Register.

Orders accordingly.

Delivered at Nairobi this 6th day of July 2006.

B.P. KUBO

J U D G E