



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. 145 of 2019(OS)**  
**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF CHILD JM IN THE MATTER OF AN APPLICATION FOR ADOPTION BY**

JSM.....1<sup>ST</sup> APPLICANT

AWN.....2<sup>ND</sup> APPLICANT

**JUDGMENT**

1. The applicants JSM and AWN are a Kenyan couple aged 52 years and 46 years, respectively. The 1<sup>st</sup> applicant is an administration police officer while the 2<sup>nd</sup> applicant is a civil servant. The couple got married sometimes in the year 2003 under customary law. They solemnized their marriage on the 20<sup>th</sup> April 2011 at the Registrar's Office at Nairobi County. They are blessed with two (2) children. On 28<sup>th</sup> October 2019 they filed this originating summons dated 17<sup>th</sup> October 2019 seeking to adopt Child JM.

2. Child JM is estimated to have been born on the 19<sup>th</sup> June 2011. The child was rescued by the Assistant Chief Murera. The child was abandoned at [Particulars Withheld]. The matter was reported at Ruiru Police station and was recorded as O.B. No. xxxx. The child was temporarily placed at Nest Children's Home by the Sub-County Children's Office Ruiru. She was formally committed to the Home by the Thika Children Court in **Protection and Care Case No. 111 of 2011** on the 15<sup>th</sup> July 2011. Police efforts to trace the mother or relatives of the child were not successful. On 25<sup>th</sup> January 2012, the child was declared free for adoption and Certificate No. xxx issued by the KKPI Adoption Society. The applicants have been with the child since 16<sup>th</sup> January 2012 when the child was placed with them for foster care.

3. On 20<sup>th</sup> February 2020 the court appointed PNK as the guardian *ad litem* and ordered her and the Director of Children Services to separately carry out a social inquiry on the applicants to determine their suitability to adopt the child. The two reports were filed. Both recommended the applicants to be allowed to adopt the child. The reports found that the applicants were socially, emotionally and financially stable and suitable to adopt the child. It was also found that the child had bonded well with them.

4. **Section 156 (1) of the Children Act, No. 8 of 2001** provides that:

**“(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with this rules prescribed in that behalf.**

**(2) Any person who contravenes the provision of subsection (1) of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand shillings or to both such imprisonment and such fine.”**

**Rule 18, of the Children Adoption Regulations** provides:

**“(4) Where the adoption society approves an adoption placement, it shall submit the report containing its decision to the National Adoption Committee, within fourteen days from the date its decision is made, requesting that the child be declared free for adoption pursuant to section 186 (7) (i) of the Act.**

**(5) No person shall commence any arrangements for the adoption of a child unless and until the National Adoption Committee has, by written confirmation, declared the child free for adoption.”**

5. The court notes that the child JM was placed with the applicants about nine (9) days prior to being declared free for adoption which was contrary to the above provisions.

6. Nonetheless, considering that the child has not known any other home and parents since 2012, and considering that it's best interests is the paramount concern of this court, I will allow the adoption. The applicants have demonstrated their capability to provide a conducive home and family environment in which the child will grow and develop. They will assume all parental rights and obligations of the biological parents of the child once adopted, and shall treat her as if she was born to them. They have been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit their property. The applicants shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child. The consent of the mother of the child is hereby dispensed with as she was found abandoned.

7. Having been satisfied that all the legal requirements for a local adoption under the **Children Act** have been met, the following orders shall issue:-

a) the applicants JSM and AWN are hereby allowed to adopt Child JM.;

b) Child JM shall henceforth be known as JNM;

c) the child's date of birth shall be 19<sup>th</sup> June 2011 and shall be presumed Kenyan citizen having been found abandoned in Ruiru in Kenya;

d) BMM and MNN are hereby appointed as the child's legal guardians in the event of the death or incapacity of the applicants before she is of full age and fully self-reliant;

e) the Registrar-General is directed to enter this adoption in the Adopted Children Register; and

f) the guardian *ad litem* is hereby discharged.

**DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF FEBRUARY 2022.**

**A.O. MUCHELULE**

**JUDGE**