



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. E081 OF 2020**  
**IN THE MATTER OF**  
**BABY A W ALIAS A W ALIAS UNKNOWN BABY ALIAS**  
**ABANDONED BABY BOY..... PETITIONER**  
**AND**  
**SMM .....1<sup>ST</sup> APPLICANT**  
**LGM .....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is the originating summons dated **6<sup>th</sup> November 2020** by which the Applicants seek the following orders:-

**“1. SPENT**

**2. SPENT**

**3. THAT the Applicants be authorized to adopt BABY A W ALIAS A W ALIAS UNKNOWN BABY ALIAS ABANDONED BABY BOY to be known as A M.**

**4. THAT the boy be presumed to a Kenyan citizen by birth.**

**5. THAT the child's date of birth be 7<sup>th</sup> June 2018 and the place of birth be NANYUKI.**

**6. THAT the Registrar General be directed to enter the adoption in the Adopted Children Register.**

**7. THAT the Director Immigration be authorized to issue the child with a Kenyan Passport.**

**8. THAT DKN and NNN be appointed as the legal Guardians of the child in the event of the death or incapacity of the Applicants before the child is of age or independent.**

**9. THAT the court be pleased to make any further orders it deems necessary. ”**

2. The application was supported by the sworn statement of the two Applicants dated **6<sup>th</sup> November 2020** and was canvassed by way of oral evidence via the online platform.

3. The Applicants are a married couple who solemnized their union in **May 2012**. The couple have one biological child, a daughter who was born in **April 2013**. They have not since borne any other child together hence their desire to adopt a child.

4. Both applicants confirmed that they understand the legal implications of an adoption order. They undertake to accord to the child all the

rights due to a biological child including the right to inherit.

### **ANALYSIS AND DETERMINATION**

5. I have carefully considered this application for adoption, the sworn statement made by the applicants and annexures thereto as well as the evidence adduced before the court.

6. The prerequisites for an Adoption order are set in **Section 156(1)** of the **Children's Act 2001**, which provides as follows: -

**159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf."**

7. The Subject child is a boy child who was born in **Nanyuki** on **7<sup>th</sup> June 2018**. A copy of the child's Birth Certificate Serial Number **XXXX** as well as a copy of the Birth Notification Serial Number **XXXX** are annexed to the summons (Annexure '**SLM-1**'). Thus the child is now aged approximately **3 ½ years** old and is above the **six week** age limit provided for in law.

8. **Little Angels Network** which is a registered Adoption Agency have annexed to the summons the original copy of their certificate serial No. **XXXX** dated **12<sup>th</sup> June 2019** declaring the child Free for Adoption (Annexure '**SLM-8**'). Accordingly I am satisfied that all the legal prerequisites for the granting of an adoption order have been met.

9. The duty of this court is to determine on the basis of the evidence before it whether the Applicants are suitable adoptive parents. The Applicants **SMM** and **LGM** are both citizens of Kenya as evidenced by the annexed copies of their National Identity Cards (Annexure '**SLM-10**'). They are a married couple who solemnized their union at the **[particulars withheld] Ministries in Nairobi** on **26<sup>th</sup> May 2012**. A copy of their marriage certificate serial No. **XXXX** is annexed (Annexure '**SLM-11**').

10. The Applicants have borne one biological child together, a daughter named **EN** who was born on **19<sup>th</sup> April 2013**. A copy of the child's Birth Certificate Serial No. **XXXX** appears as Annexure '**SLM-12**' to the summons. Following the birth of their daughter who is now aged about **nine (9) years** the Applicants have not been blessed with another child. They now wish to adopt a child in order to expand their family.

11. The Applicants are both committed Christians and intend to raise their child in the Christian Faith. They worship at **[particulars withheld] Ministries in Mwiki** where the **1<sup>st</sup>** Applicant is a **Pastor** whilst the **2<sup>nd</sup>** Applicant is a **Bible Study leader**.

12. The Applicants are financially stable. They run a grocery business together at the **Githurai 45 Market**. Additionally, the couple own a plot in **Juja, Kiambu County** where they intend to construct a home and have Ancestral land in **Kerugoya, Kirinyaga County**. The Applicants have annexed to the summons copies of their financial statements ('**SLM-13**').

13. Both Applicants underwent medical examination and both were found to be physically and mentally fit. Copies of their medical evaluations have been annexed ('**SLM-14**'). Additionally the Applicants have annexed copy of clearance certificates issued to each by the **National Police Service** confirming that neither has a criminal record.

14. The Applicants told the court that their extended family approve of their intention to adopt and have welcomed the child in the family. They have appointed as legal Guardian for the child **DKN** and **NNN**, a couple who are close family friends to the Applicants. The two proposed legal guardians have both signed a letter of consent ('**SLM-17**') indicating their willingness to act as legal guardians for the child.

15. From the material available I am satisfied that the Applicants are suitable adoptive parents who have a genuine desire to provide this child with a stable home environment.

16. The Subject child was born on **7<sup>th</sup> June 2018**. The child was found abandoned immediately after birth (with the umbilical cord still attached) placed in a sack, and left in a thicket near the **Nanyuki [particulars withheld]** A good Samaritan rescued the child and the abandonment was reported at the **Nanyuki Police Station** vide **OB Number XXXX** of **7<sup>th</sup> June 2018**.

17. Upon being rescued the child was admitted at the **Nanyuki Teaching and Referral Hospital** for first aid and treatment. Therefore on **8<sup>th</sup> October 2018** the **Nanyuki Children Court** formally committed the child to **the New Life Home Trust** in **Nyeri** for care and Protection. On **21<sup>st</sup> August 2019** the child was placed into the custody of the Applicants under a **Foster Care Agreement**.

18. This is a child who was abandoned at birth. Efforts to trace his biological mother and/or other relatives have borne no fruit. No person has ever come forward to claim the child. A final police letter dated **5<sup>th</sup> February 2019** from **Nanyuki Police station** is Annexure '**SLM-6**'. In the circumstances, there is no person from whom consent for this adoption can be sought and/or obtained. Accordingly, I waive the requirement for consent in line with **Section 158(4)** of the **Children Act, 2001**.

20. **Article 14** of the **Constitution of Kenya, 2010** deals with the question of Citizenship. **Article 14(4)** provides as follows:-

**"(4) A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth."**

21. Given that the minor was abandoned in **Nanyuki** in the **Republic of Kenya** at birth, I declare him to be a Kenyan Citizen by birth.

22. In deciding upon any matter involving a child, courts are obliged to give priority to the best interest of the said child. **Section 4(2)** of the **Children Act 2001** provides:-

**“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”.** (Own emphasis).

23. The Subject child was abandoned shortly after his birth. He faced an uncertain future in Childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment. I have perused the reports prepared by the Adoption Agency, the Guardian Ad Litem and the Director Childrens Services. All three reports are positive and all recommend the adoption.

24. A home visit was conducted by the **Director Childrens Services** on **13<sup>th</sup> July 2021**. The Applicants were found to be residing in rented accommodation at **Githurai 45**. They live in a two-roomed house with adequate space and facilities to raise both children. I was able to observe the child online. He was a healthy cheerful boy who was able to answer basic questions about himself.

25. The child has now lived with the Applicants since **August 2019**. No doubt he has a bonded with the Applicants and their daughter. Indeed this is the only family he knows. It is my view that this adoption will serve the best interests of the child.

26. Accordingly, I do allow this application and make the following orders:-

**(1) The Applicants SMM and LGM are authorized to adopt the child known as BABY AW ALIAS AW ALIAS UNKNOWN BABY ALIAS ABANDONED BABY BOY.**

**(2) Upon adoption the child will be known as AM.**

**(3) The child is declared to be a Kenyan Citizen by birth and is entitled to all the rights and benefits in respect thereto.**

**(4) The Registrar General is directed to make the relevant entry in the Adopted Children Register.**

**(5) DKN AND NNN are appointed as the legal Guardians of the child.**

Dated in **Nairobi** this **4<sup>th</sup>** day of **February 2022**.

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**MAUREEN A. ODERO**

**JUDGE**