



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**ADOPTION CAUSE NO. EO34 OF 2021**

**IN THE MATTER OF**

**BCM .....THE CHILD**

**AND**

**GMK.....1<sup>ST</sup> APPLICANT**

**SNK.....2<sup>ND</sup> APPLICANT**

**JUDGMENT**

1. Before this Court is the Originating Summons dated **24<sup>th</sup> March 2021** by which the Applicants herein seek the following orders:-

**“1. SPENT**

**2. SPENT**

**3. THAT the Applicants be authorized to adopt BC to be known as BCM.**

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

**5. THAT the child's date of birth be 15<sup>th</sup> December 2021 and the place of birth be Voi.**

**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 GMN and RWGS be appointed 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 summons was supported by the joint statement of the Applicants dated **26<sup>th</sup> March 2021**. The Application was canvassed by way of oral evidence via the online platform.

3. The Applicants **GMK** and **SNK** are a married couple who got married to each other in **November 2007**. Their union was not blessed with any child hence their desire to adopt the subject child. Both Applicants confirmed to the court that they understood the legal implications of an adoption order. They undertook to accord to the Subject-child all the rights due to a biological child including the rights to inherit.

**ANALYSIS AND DETERMINATION**

4. I have carefully considered the summons before this court, the sworn statement of the Applications and annexures thereto as well as the reports filed by the official agencies.

5. The prerequisites for an adoption order are set out 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.”**

6. The Subject-child was born on **16<sup>th</sup> March 2012** at **Moi Hospital** in **Voi County**. The child is therefore now aged about **ten (10) years** well above the **six week** age limited provided for by law.

7. **KKPI Adoption Society** which is registered adoption agency have annexed to their report a copy of their certificate dated **15<sup>th</sup> November 2019**, Serial No. **xxx** declaring the Subject-child Free for Adoption. In the circumstances, I am satisfied that all the prerequisites for an adoption order have been met.

8. The duty of this court is to analyze the evidence available to determine whether the Applicants are suitable adoptive parents. The Applicants are both Kenyan Citizens as is evidences by the annexed copies of the national Identity Cards (**'GSM-3'**)

9. As stated earlier the Applicants are a couple who got married to each other on **24<sup>th</sup> November 2007**. They have annexed to the summons a copy of their marriage certificate (**'GSM-4'**). Their union has however not been blessed with any offspring hence the desire to adopt a child in order to complete their family.

10. The Applicants are both committed Christians who worship at the **Jesus Celebration Centre** in **Nairobi**. They intend to raise the child in the Christian Faith. Annexed to the summons is a recommendation letter dated **27<sup>th</sup> September 2018** written by **Pastor Wilfred Lai** of **Jesus Celebration Centre (Annexure 'GSM-5')** confirming that the applicants are active adherents of the church.

11. Both Applicants are gainfully employed. The 1<sup>st</sup> Applicant works as a teacher at the **[Particulars Withheld] Academy** whilst the 2<sup>nd</sup> Applicant is employed as an Accountant. They have annexed copies of their payslips (**'GSM-6'**) as well as copies of bank statements for an account held with the **Kenya Commercial Bank (Annexure 'GSM-7')**. Additionally the couple own land in **Machakos County**. I am satisfied that the Applicants are financially secure and are well able to provide for the needs of a growing child.

12. Both Applicants were examined by a doctor and were found to be physically and emotionally sound. Copies of their medical reports have been annexed to the summons (**'GSM-8'**). The Applicants have each annexed a copy of a clearance certificate issued by the **National Police Service** confirming that neither has a criminal record. (Annexure **'GSM-9'**).

13. From the material availed I am satisfied that the Applicants are suitable adoptive parents who have a genuine desire to provide this child with a stable and loving home.

14. The Subject-child was born at **Moi Hospital** in **Voi County** on **16<sup>th</sup> December 2012**. It is indicated that the child was delivered during the protracted medical strike when no doctors were available to attend to patients. As a result a member of public assisted the mother to deliver her baby.

15. Following the child's birth the biological mother who gave her name as **CM** approached one **Ms RMN** and requested her to hold the baby whilst the mother went to purchase some personal items. The mother never returned to collect the baby. The abandonment was reported at **Voi Police station** vide **OB Number xx of xx<sup>th</sup> December 2012**.

16. Since there were no facilities nor staff to cater of the child at the hospital the police requested **Ms N** to keep the baby until the biological mother was traced. **Ms N** took the baby to her home. The mother never returned for her baby and was never traced. **Ms N** then recommended that the Applicants who were her in-laws adopt the child. Accordingly, on **28<sup>th</sup> December 2012** the **Voi District Childrens Officers** placed the child under the care of the Applicants vide a certificate of Foster Care. The child has continued to live with the Applicants to date.

17. It is clear that the Subject-child was abandoned at birth. The child's biological mother never returned to collect her baby. Efforts by police to trace said biological mother have borne no fruits. In the premises there exist no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with **Section 158(4)** of the **Childrens Act 2001**.

18. **“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”.**

Given that the minor was abandoned in the **Republic of Kenya** at birth I do declare that the child is a Kenyan Citizen by birth.

19. 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)

20. As has been pointed out in the Report prepared by the Director Childrens Services the correct procedure was not followed in this case. The child ought to have been presented at the **Voi Children Court** for committal to a Childrens Home **before** being placed with the Applicants. Instead the child was placed directly into the custody of the applicants by the **Voi District Children Officer**.

21. However this anomaly/omission cannot be blamed on the Applicants. The abandonment was reported to the police and the Applicants also presented the matter to the relevant offices in Voi. As it is the child has been in the care and custody of the Applicants since her birth almost **ten (10 years)** ago. The Applicants are the only parents she knows. It would be counterproductive and would only traumatize the child to remove her from the only family she has ever had.

22. The court observed that the child had bonded well with the Applicants and viewed them as her parents. I was able to engage with the child online. She was a cheerful healthy girl who was able to express herself with confidence. This is a child who was abandoned at birth. She 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 as well as the Director Childrens Services. All are positive and all do recommend the adoption.

23. The Applicants have appointed a legal guardian for the **child GMN and RWGS** who are the brother and sister-in-law of the second Applicant. The said legal Guardians have sworn an Affidavit of consent dated **22<sup>nd</sup> March 2021**. (Annexure '**GSM-10**').

24. A home visit was conducted by **Director Childrens Services**. The Applicants reside in [Particulars Withheld] **Estate in Nairobi**. Their home has adequate space and facilities for the child. The couple have engaged a nanny to assist in caring for the child. They have also enrolled the child in a nearby school. I find that this adoption serves the best interests of the child. Accordingly, I do allow this summons and make the following orders:-

- (1) **The Applicants GMK and SNK are authorized to adopt the child BC.**
- (2) **Upon adoption the child shall be known as BCM.**
- (3) **The Child is declared to be a Kenyan Citizen by birth and is entitled to all the rights and benefits in respect thereof.**
- (4) **The Registrar General is directed to make the relevant entry in the Adopted Childrens Register.**
- (5) **GMN and RWGS appointed as the legal Guardians of the child.**

**DATED IN NAIROBI THIS 4TH DAY OF FEBRUARY 2022.**

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**MAUREEN A. ODERO**

**JUDGE**