



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 40 OF 2018

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES

AND

IN THE MATTER OF BABY FW aka JT

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

PKN.....1ST APPLICANT

RMM.....2ND APPLICANT

JUDGMENT

(1) Before this Court is the Amended Originating Summons dated **28th March 2018** by which the 1st Applicant **PKN** and the 2nd Applicant **RMM** seek the following orders:-

- 1. THAT the Applicants be authorized to adopt FW aka JT a child who is to be known as JNK and the Registrar – General be directed to enter this adoption into the Register of Adoptions.**
- 2. THAT HN and MW be appointed as the Legal Guardians of the minor.**
- 3. THAT the child be presumed to have been born in Kenya.**

(2) The Summons was canvassed by way of viva voce evidence on the online platform. **PW1 PKN** and **PW2 RMM** are a couple who got married to each other in the year **2011** under Kikuyu Customary Law. Their union was not blessed with any issue. As a result and with the desire to complete their family the couple decided to adopt a child. They approached the Adoption Agency and were matched with the subject child.

(3) The Applicants informed the Court that their respective families are in support of their decision to adopt a child. They both confirm that they do understand and accepts the legal implications of an adoption order. That they will accord to the child all rights due to a biological child including the right of inheritance.

(4) **PW4 JACQUELINE MWANGI** is an Officer from **KKPI** Adoption Agency. She confirmed that the Agency had filed their report recommending the Adoption.

(5) **PW5 MK** is the Guardian Ad Litem. She also filed her report in support of the Adoption.

(6) **PW6 WINFRED IKINYA** is an Officer from the **Directorate of Children's Services**. She states that the Directorate filed its report dated **12th February 2019** recommending the Adoption.

(7) **PW7 MW** is the sister to the 1st Applicant. She confirms her consent to act as legal guardian for the child in the event the Applicants are

unavailable and/or unable to care for him.

ANALYSIS AND DETERMINATION

(8) I have considered the evidence adduced in open Court as well as the various Affidavits and Reports filed in this matter. The Preliminary requirements for the making of an Adoption Order are set out in **Section 156(1)** of the **Children's Act** which provides as follows:-

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

(9) The subject-child was found abandoned in a pit latrine shortly after his birth on **18th October 2011**. The child is therefore ten **(10) years old** – well above the **six (6)** week age limit provided for by the **Act**. The **KKPT** which is a Registered Adoption Agency have produced in Court the original copy of their Certificate Serial Number **xxx** declaring the child Free For Adoption. Accordingly I am satisfied that all the legal prerequisites for an adoption order have been met.

(10) The duty of this Court is to assess the suitability of the Applicants as Adoptive parents. The Applicants are both Kenyan citizens. They have annexed to the Summons copies of their National Identity Cards [**Exb 1**]. The Applicants are a couple who initially got married to each other in the year **2011** under Kikuyu Customary Law. Thereafter on **12th August 2014** the couple formalized their union through a Statutory Marriage conducted at the Office of the **Registrar of Marriages**. Annexed to the Summons is a copy of their Marriage Certificate Serial Number [...] [Exhibit 2].

(11) Despite having been in a marital union for about ten (10) years the Applicants were not blessed with any children – hence their decision to adopt a child. The Applicants state that they have informed their respective families who are supportive of their decision to adopt a child. Indeed the sister of the **1st** Applicant was in Court and confirmed her consent to act as Legal Guardian for the child. Additionally one **HN** a brother to the **1st** Applicant has written a letter indicating the support of the family for the Adoption process (**page 16** of Summons).

(12) The Applicants are both engaged in activities which provide them with regular income. The **1st** Applicant works as a Mechanic at **C M Ltd**. He has annexed a copy of his appointment Letter dated **12th April 2015** (Exhibit 6). He earns a salary of **Kshs. 20,000/-**. The **2nd** Applicant runs a Cereals business from which she earns roughly **Kshs. 15,000/-** monthly. Annexed to the Summons are copies of a Statement from [**Particulars Withheld**] **SACCO LTD** indicating the Savings which the couple have. I am satisfied that the Applicants earn a stable income and are able financially to provide for the needs of the child.

(13) The Applicants both profess the Christian faith and intend to raise the child as a Christian. They have each annexed a recommendation letter dated **26th November 2014** written by Reverend **DM** of **PKP**. (Exhibit 7). They have each annexed copies of Police Clearance Certificates issued by the **Kenya Police Service** (Exhibit 8) which is proof that neither Applicant has a Criminal record. The couple reside with the child in a rented premises in the **Pipeline Area** of Nairobi.

(14) All in all I am satisfied that the Applicants are a couple in a stable marital union who have a genuine desire to adopt the child into their family. In my view they are suitable as adoptive parents.

(15) The subject child is a boy-child who is believed to have been born on **18th October 2011**. Shortly after his birth the child was found and rescued from a pit latrine by Officers from **Kiambu Police Station**. The abandonment was reported vide **OB Number xx of xxth October 2011**. On **10th October 2014**, the **Kiambu Children's Court** committed the child to **Happy Life Children Home** for Care and Protection. Thereafter on **20th July 2015** the child was released into the custody of the Applicants under a Foster Care Arrangement.

(16) **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.”

(17) The subject-child was found abandoned shortly after birth in **Kiambu County** in the **Republic of Kenya**. As such I declare that the child is a Kenyan citizen by birth.

(18) The subject-child was abandoned by the mother who bore him. All efforts made to trace the biological mother / relatives of the child have been unsuccessful. To date no person has come forward to claim the child. A final police letter dated **13th January 2013** written by the Officer Commanding **Kiambu Police Station** confirms this fact. Given that there is no known person from whom consent for this adoption can be sought and/or obtained I do hereby waive the requirement for consent in line with **Section 159 (1) (a) Children Act**.

(19) In deciding upon any matter involving a child Courts are obliged to give priority to the best interests of the said child. **Section 4(2)** of the **Children Act** 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) The subject-child was abandoned at birth. At best he faced an uncertain future in Children's Homes or other similar institutions. This

Adoption allows the child the opportunity to be raised in a stable and loving family environment.

(21) A home visit was conducted by the **Director Children’s Services**. It revealed that the couple lived in rental accommodation at **Pipeline Area**. The 2nd Applicant conducts her business nearby and is able to keep an eye on the child when he is not in school. The home was found to be conducive for raising a young child.

(22) The subject-child has lived with the Applicants since **July 2015** – a period of over **five (5) years**. This is the only family he knows. I have no doubt that the child has bonded with the Applicants. I was able to see and interview the child online. He was a happy healthy child who was obviously being well cared for. He refers to the Applicants as his **‘mother’** and **‘father.’** The child informed the Court that he attends school and is in Grade Two.

(23) The Applicants have appointed a Legal Guardian the 1st Applicant’s brother and sister-in-law. The two have consented to act as Legal Guardians for the child.

(24) Based on the foregoing I am satisfied that this adoption serves the best interests of the child. As such I do allow this application and make the following orders:-

1. The Applicants **PKN** and **RMM** are authorized to adopt the child **FW aka JT**.
2. Upon Adoption the child will be known as **JNK**.
3. The child is declared to be a Kenyan citizen by birth.
4. The Registrar-General is directed to make the relevant entries in the Adopted Children’s Register.
5. **HN** and **MW** are appointed as the Legal Guardians for the child.

DATED IN NAIROBI THIS 14TH DAY OF MAY, 2021.

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MAUREEN A. ODERO

JUDGE