



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 13 OF 2019**

**IN THE MATTER OF CHILDREN ACT, 2001**

**IN THE MATTER OF BABY SW**

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

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

**JUDGMENT**

1. The Applicants herein are AWC and JMM. AWC, the male Applicant (1<sup>st</sup> Applicant) is aged 44 years while JMM (2<sup>nd</sup> Applicant, female) is aged about 39 years. They reside in Kiambu County. The 1<sup>st</sup> Applicant is a carpenter by trade and is gainfully employed. Equally, the 2<sup>nd</sup> Applicant is an employee of a bookshop since 2009. They got married under customary law in 2003 but in 2014 they formalized their union under the African Christian Marriage and Divorce Act (now repealed).

2. The Applicants ascribe to the Christian faith. They desired to have their own biological children but have been unable due to medical reasons. This was the key reason why in 2013 they adopted their eldest daughter GW in 2016. GW is 7 years old. The Applicants have applied to adopt baby SW, the subject minor herein.

3. SW is a female, now aged about 5 years. At the age of a year SW was admitted at Kenyatta National Hospital while suffering from chest complications and malnutrition. She was admitted on 14/09/2015 but the mother absconded and abandoned the subject in the hospital. The matter was reported to Kenyatta Police Post vide OB No. [...], 2015. As the mother did not return, she was discharged to the care of the children home known as House of Charity on 12/11/2015.

4. By an order dated 18<sup>th</sup> April, 2016 made in Protection and Care case no. 58 of 2016 at the Nairobi Children's Court the subject was committed to the home. Efforts made to trace the mother, said to be a homeless person did not bear fruit. Nobody came forward to claim SW and on 15<sup>th</sup> November, 2017 Buckner Kenya Adoption Services declared SW free for adoption vide certificate No. [...]. On 2<sup>nd</sup> December 2017, the subject minor was placed in the care of the Applicants pursuant to a care agreement executed between the Applicants and the Children's Home, House of Charity. The subject minor has remained in the care of the Applicants since then.

5. The court has considered the social enquiry report filed by the Adoption Agency as well the reports prepared by the guardian ad litem and the Children Officer Kiambaa Sub-County, pursuant to the order made on 27/02/2020 in this matter. In addition the court has perused other material on record. It appears that the Applicants are in a stable and happy union, and despite their modest means have the financial and emotional capacity to take on parental responsibility. They have proved this capacity during the statutory period in which SW has been in their care but have also effectively borne their parental responsibility in respect of GW, the older adopted daughter.

6. Their sole motivation for the instant adoption is to have children of their own. The various reports and letters on record recommend the proposed adoption. According to the Children Officer's report the subject has bonded well with the prospective adoptive parents and her prospective sibling GW.

7. The court is obligated in a matter of this nature, to consider and uphold the best interests of the subject. See section 4(3) of the Children Act. The subject's mother abandoned her. The Applicants are willing to take on parental responsibility over the subject. They earn a monthly gross of Kshs. 35,000/= between them and have made suitable living and social arrangements to accommodate and raise the subject as their own child.

8. The court is satisfied that the proposed adoption will benefit the subject as it gives her a chance to belong to and be raised in a family that loves and cares for her. The Applicants have demonstrated their capacity to do so, not only for the subject since being placed with them, but also for their adoptive daughter GW. They are eminently qualified for a local adoption.

9. In the circumstances, the court will grant prayers 1, 2 and 3 of the originating summons dated 14<sup>th</sup> October, 2019.

**DELIVERED AND SIGNED ELECTRONICALLY ON THIS 7TH DAY OF MAY 2021.**

**C. MEOLI**

**JUDGE**

**IN THE PRESENCE OF:**

**For the Applicants: Miss Muhanda.**

**Applicants: N/A.**

**Kevin Ndege: Court Assistant.**