



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**ADOPTION CAUSE NO. 303 OF 2013**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 (CAP 586 LAWS OF KENYA)**

**AND**

**IN THE MATTER OF ADOPTION OF CM alias TW (THE BABY) alias TWK alias CK alias UNKNOWN BABY alias ABANDONED BABY GIRL (MINOR)**

**AND**

**IN THE MATTER OF AN APPLICATION OF ADOPTION BY EWG**

**JUDGMENT**

(1) Before this Court is the Amended Originating Summons dated **20<sup>th</sup> January 2021** by which the Applicant **EWG** sought the following orders:-

“(a) SPENT

(b) SPENT

(c) SPENT

**(d) That the Applicant be authorized to adopt BABY CM alias TW alias MISS TWK alias CKK alias UNKNOWN BABY alias ABANDONED BABY GIRL and the said child to be known as TWW after the adoption and the Registrar General be directed to enter this adoption into the Register of Adoptions.**

**(e) That PATRICK KARIUKI GATHIETHI be appointed as the Legal Guardian of the minor.**

(2) The application was canvassed by way of vire voce evidence on the online platform. The Applicant **EWG** told the Court that she lives in **Kirinyaga County** where she runs a business as a Saloonist. The Applicant told the Court that she was married as a second wife to one **KK** from **1998 to 2016**. However the marriage fell apart and she now presents this application as a single Applicant.

(3) The Applicant stated that due to medical complications she has been unable to bear a child of her own hence her desire to adopt a child. She confirmed that she understood and accepted all the legal implications of an adoption order including the right of an adopted child to inherit.

(4) **PW2 LMK** was appointed as Guardian ad Litem in this matter. She filed in Court her report recommending the adoption.

(5) **PW3 GRACE EKAMBI** is an Officer from the **Little Angels Network** (the Adoption Agency). She confirms that the Agency has filed in Court their report.

(6) **PW4 WINFRED IKINYA** represented the **Director Children's Services**. She also confirmed that they had filed in Court their Report dated **1<sup>st</sup> August 2019** recommending the Adoption.

**ANALYSIS AND DETERMINATION**

(7) I have considered the evidence adduced before this 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.”**

(8) The subject child herein is believed to have been born on **24<sup>th</sup> December 2012**. She is therefore now about **nine (9)** years old well above the six (6) week old age limit provided by law. The **Little Angels Network** which is a Registered Adoption Agency have filed in Court a copy of their Certificate Serial Number **XXXXXX** declaring the child Free for Adoption. As such I am satisfied that this application is properly before the Court.

(9) It is the obligation of this Court to assess whether the Applicant is a suitable adoptive parent for the child in question. The Applicant is a Kenyan citizen as evidenced by the annexed copy of her National Identity Card (see **page 11** of Bundle of Documents filed on **21<sup>st</sup> January 2021**). Following the breakdown of her marriage the Applicant is now a single lady who makes a living as a Saloonist.

(10) The Applicant informed the Court that being unable to bear her own child she is desirous to adopt a child to make her family complete. That her family are aware of and support her intention to adopt the child.

(11) The Applicant earns roughly **Kshs. 20,000/-** per month and proof of her financial capacity is evidenced by her annexed Bank Statements from **Equity Bank** (Annexure **'EWG '8'**). I am satisfied that the Applicant is financially secure and is capable of taking care of the child's needs.

(12) The Applicant was examined by a medical doctor at **AAR Health Centre** and was found to be in good mental and physical health. She had no infirmities that would hinder/prevent her ability to care for the child. The Applicant also annexed a copy of a Certificate of Good Conduct issued by the Kenya Police on **20<sup>th</sup> July 2012**. This is proof that she has no criminal record.

(13) The Applicant has appointed one **PKG** as the child's Legal Guardian. The said Guardian has signed a consent to act as Guardian in the event of the demise of the Applicant. All in all I am satisfied that the Applicant is a suitable adoptive parent.

(14) The subject child is a female child who is believed to have been born on or about **24<sup>th</sup> December 2012**. The child was abandoned shortly after birth in a shamba in **[particulars withheld]**, **Chogoria Location, Maara District, Meru County**. A good samaritan rescued the child and reported the abandonment at **Chogoria Police Station** vide **OB Number 20** of **24<sup>th</sup> December 2012**. The child was admitted for immediate care at **Chuka Hospital** and was later committed to the **New Life Home Trust**. On **24<sup>th</sup> May 2013** at the age of five (5) months the child was released into the custody of the Applicant under a Foster Care Agreement.

(15) **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.”**

(16) The subject-child was found abandoned in Kenya shortly after her birth. As such I declare the child to be a citizen of Kenya by birth.

(17) Following her abandonment efforts to trace the biological mother/relatives of the child have been fruitless. A Final Police Letter dated **30<sup>th</sup> July 2013** from the **OCS Chogoria Police Station** confirms that no person has come forward to claim the child. Given that there exists no person from whom consent for this adoption can be sought and/or obtained I waive the requirements for consent in line with **Section 159(1) Children Act**.

(18) 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]**

(19) The subject child was abandoned at birth. She has now made a home and a family with the Applicant. A home visit conducted by the Children's Department indicated that the Applicant lived with the child in **[particulars withheld] Sub-Location, Mutithii Location Kirinyaga South**. The homestead was found to be conducive for raising a young child.

(20) The child has lived with the Applicant since she was five (5) months old. This is the only home/family she knows. I was able to interview the child online. She was neat, pretty, well-dressed and was obviously well cared for. The child was full of smiles and confirmed that she is in **Grade 2** at **[particulars withheld] Academy**.

(21) I have no doubt that the child has bonded well with the Applicant who she refers to as her **'Mummy'**. The Reports filed in Court by the various Agencies all recommend the Adoption. I have no doubt that this adoption will serve the best interests of the child.

(22) Finally I allow this application for Adoption and make the following orders:-

- 1) The Applicant **EWG** is authorized to adopt the child known as **BABY CM alias TWK**.
- 2) Upon adoption the child will be known as **TWW**.
- 3) The child is declared to be a Kenyan citizen by birth.
- 4) The Registrar General is directed to make the relevant entry in the Adopted Children Register.
- 5) **PKG** is appointed as the Legal Guardian for the child.

Dated in **Nairobi** this **6<sup>th</sup>** day of **May, 2021**.

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**MAUREEN A. ODERO**

**JUDGE**