



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. 86 OF 2019**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011**

**IN THE MATTER OF AN APPLICATION FOR KINSHIP ADOPTION OF BABY MOS**

**BY**

**SOO AND RSS**

**(APPLICANTS)**

**JUDGMENT**

1. The Applicants SOO and RSS are in a monogamous marriage under the Marriage Act solemnized on 7<sup>th</sup> August, 2013 at the Registrar's Office. They had no children of their own before the placement of the minor with them. They wish to adopt the female child known as MOS, through the amended Originating Summons dated 3<sup>rd</sup> December, 2019.

2. They have pleaded that the 1<sup>st</sup> Applicant, SOO is an Electrical Engineer at [Particulara withheld] while RSS is a Clerk at [Particulara withheld]. They reside in Embakasi within Nairobi County and both profess the Christian faith.

3. The records produced in evidence indicate that the minor was born on 5<sup>th</sup> December, 2014 as evinced by the birth certificate serial no.[....]. The biological father of the minor, GBS is a younger brother to the prospective adoptive mother RSS. The biological mother to the minor JW abandoned her with the father when she was only two (2) months old. Subsequently, the biological father neglected her and the Applicants took her in and have been raising her as their own. The biological father has given his consent to the adoption. The whereabouts of the biological mother are unknown.

4. Prior to the hearing of the adoption application, Change Trust Adoption Society prepared and filed a report dated 30<sup>th</sup> January, 2019. They also issued a certificate No. [...] dated 30<sup>th</sup> January, 2019 declaring the child free for adoption. The guardian ad litem MKK filed a report dated 24<sup>th</sup> February, 2020 which was favourable and recommended the adoption of the child by the Applicants.

5. An officer from the office of the Director of Children Services conducted home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child. She filed a report dated 17<sup>th</sup> February, 2020 recommending the adoption for reasons that the Applicants will provide a stable home and opportunities for the minor to thrive. The child was virtually court during the hearing and appeared to have formed a bond with the two Applicants. The Applicants' family members are aware of the proposed adoption and support it.

6. The orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the Constitution provides the guiding principle on this question as follows:

**“A child's best interests are of paramount importance in every matter concerning the child.”**

The other pertinent law is the Children Act No. 8 of 2001 and in particular Section 4(3) thereof amplifies this principle.

7. This is a Kinship Adoption. The 2<sup>nd</sup> applicant is related to the child since the child's biological father is her brother. According to the Guidelines for Alternative Family Care of Children in Kenya page 153,

**“Kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child.”**

8. I have perused the entire record and find that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought.

9. From the foregoing, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, I allow the prayers sought in the amended Originating Summons dated 3<sup>rd</sup> December, 2019 and order as follows:

- i. The Applicants SOO and RSS are hereby allowed to adopt **Baby MOS**.
- ii. Her date of birth is 5<sup>th</sup> December, 2014 and the place of birth is Nairobi as evinced in the birth certificate no. [...].
- iii. AOS is hereby appointed the legal guardian of the child in the event that the Applicants die or are incapacitated by ill-health.
- iv. The Registrar General is directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 6<sup>TH</sup> DAY OF MAY, 2021.**

.....

**L. A. ACHODE**

**HIGH COURT JUDGE**

**In the presence of .....Advocate for the Applicants**