



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO.E1 OF 2020**

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

**AND**

**IN THE MATTER OF: BABY CA AKA B ALIAS JWW**

**AND**

**IN THE MATTER OF: AN APPLICATION FOR ORDERS OF**

**ADOPTION OF BABY CA AKA B ALIAS JWW BY JWM.....APPLICANT.**

**BETWEEN**

**JWM.....APPLICANT**

**AND**

**BUCKNER KENYA ADOPTION SERVICES.....RESPONDENT**

**JUDGEMENT**

1. The applicant herein moved this honourable court vide originating summons dated 6<sup>th</sup> February, 2020 seeking for orders that;

- a) Pursuant to Article 14(4) of the Constitution of Kenya 2010 and Section 11 of The Children Act, 2001, this honourable Court be pleased to declare the child BABY CA AKA B ALIAS JWW a Kenyan citizen by birth.
- b) Pursuant to the provisions of SECTION 159 OF THE CHILDREN'S ACT, 2001, this honourable court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of SECTION 158 OF THE CHILDREN'S ACT, 2001.
- c) The applicant JWM be authorized to adopt BABY CA AKA B ALIAS JWW a child.
- d) Upon the making of the adoption order, the child to be known as JWW.
- e) Upon making the adoption order, EWN be appointed legal guardian of the child as provided for by the provisions of SECTION 164 OF THE CHILDREN ACT, 2001.
- f) Upon making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of birth of the child as 20<sup>th</sup> August, 2018 in the Adopted Children's Register as provided for by SECTION 170 OF THE CHILDREN ACT, 2001.
- g) The costs of this application be costs in the cause.

2. The application is supported by the averments contained in the statement in support thereof sworn on 21<sup>st</sup> September, 2020. The applicant is an adult Kenyan citizen born in 1974. She was previously married to WM whom they separated with in the year 1998 due to lack of children. Unfortunately, the husband later died in 2008 due to cancer. The motivation to adopt the baby has been propelled by the desire to be a mother and to nurture a child as she is not able to have her own biological child due to blockage of the fallopian tubes.

3. The Applicant is a business lady with assets in Voi and savings with Equity Bank.

4. Regarding the child estimated to be born on 20<sup>th</sup> August, 2018, she was found abandoned near [Particulars Withheld] Hotel in Kaptembwa by a good Samaritan on 21<sup>st</sup> August, 2018. The matter was reported at Kaptembwa Police Station on the same day vide **OB NO.x/xx/x/2018**. The child was taken to Nakuru Provincial General Hospital for medical evaluation. On 5<sup>th</sup> September she was committed into the legal custody of **African gospel church baby centre** by the Children's Court Nakuru vide care and protection case **No.541 Of 2018**.

5. Despite every effort made by the police Kaptembwa police station as evidenced by their letter dated 27<sup>th</sup> May 2019, nobody came up to claim the baby.

**6. Buckner Kenya Adoption Service** in its meeting held on 21<sup>st</sup> June, 2019, **declared** the child free for adoption and a **Certificate S/No. [...]** thereof issued. Subsequently, the child was placed under the care and control of the Applicant on 31<sup>st</sup> July, 2019 for the mandatory three months continuous period.

7. Upon instituting these proceedings, **LWN** was on 7<sup>th</sup> December, 2020 appointed guardian ad litem pursuant to Chamber Summons Application dated 21<sup>st</sup> September, 2020. The Director Children Services and guardian ad litem were directed to file their respective social inquiry and assessment reports within 45 days.

8. Prior to the hearing, the Director Children Services through the County Coordinator for Children Services Taita Taveta filed his report dated 16<sup>th</sup> march, 2021 recommending the adoption. Equally, the guardian ad litem filed her report on 15<sup>th</sup> January, 2021 thus recommending the adoption.

9. During the hearing, the applicants urged the court to allow the application to enable them adopt the baby. She stated that she understood the consequences of adoption and that it is permanent.

10. I have considered the application herein, materials in support and evidence by various witnesses. My humble duty is to ascertain from the available evidence and material in support whether the baby is available for adoption; whether the applicants are fit to adopt the baby and most importantly, whether the adoption is in the best interests of the child.

11. The baby herein was found abandoned near [Particulars Withheld] Hotel in Kaptembwa by a good Samaritan on 21<sup>st</sup> August, 2018. The matter was reported at Kaptembwa Police Station on the same day vide **OB No.x/xx/x/2018**. Every effort to trace her relatives did not bear any fruit. In compliance with Section 158 and 159 of the children Act, consent of the parents is dispensed with.

12. Regarding the baby's nationality, it is clear that the baby was found abandoned near [Particulars Withheld] near Kaptembwa within the Republic of Kenya. The constitution under Article 14(4) does recognize that a child found in Kenya who is less than 8 years of age, and whose nationality and parents are not known, is presumed to be a Kenyan citizen by birth. In view of this provision, the child herein is presumed to be Kenyan citizen by birth.

13. The subject child is above 6 weeks and below 18 years which period falls within the age bracket of any adoptive baby pursuant to section 156 of the children's act. Further, Section 157 does recognize any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. I have no doubt the child is fit for adoption.

14. The court is required to assess the suitability of the adoptive parent and in this case the Applicant is a Kenyan citizen thus qualifying the adoption to be a local one. She is 47 years which places her under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with section 158 of the Children Act.

15. She has been described as financially stable as she is a business lady in Voi with an estimated monthly income of Kshs 65,000 and a piece of land which resources are necessary for the family support. She is caring, loving and a Christian with no criminal record.

16. Since the placement of the minor into her custody on 31<sup>st</sup> July, 2019, the child has fully bonded with her. She also understands the consequences of adoption and that it is permanent. She appreciates the role of a parent and admits she will treat the baby like her biological child. She is dedicated to providing suitable family environment so that the child can thrive and become a fruitful member of society. Therefore, I have no doubt that she has met the necessary requirements to adopt the baby and that she will provide and promote a stable, supportive and nurturing environment for the baby.

17. On the question of whether the adoption is in the best interests of the baby, guidance can be drawn from Article 53(2) of the Constitution and Section 4(2) and (3) of the Children Act which underscores the best interests of a child principles as the primary consideration before making any decision concerning a baby.

18. The child herein was abandoned and nobody has come forward to claim her. She, like any other child is in need of parental care and guidance, basic necessities inter alia; food, shelter, education and clothing. She has fully integrated with the applicant. I am satisfied that this adoption is certainly in the best interests of the child and therefore allow the application. In this regard, I am guided by the holding in the case of **In re R (CHILD) [2021] eKLR** where the court stated that, **"This is a child who was abandoned at birth. He faced an uncertain future in the Children's Homes and Institutions. This adoption affords the child the opportunity to be raised in a loving and secure home environment."**

19. Accordingly, the application is allowed with orders that:

- a) The child is declared a Kenyan citizen by birth
- b) The consent of biological parent/s or guardian/s is dispensed with.
- c) The applicant is authorized to adopt BABY CA AKA B ALIAS JWW who shall henceforth be known as JWW
- d) EWN is hereby appointed legal guardian of the minor in the event of any eventuality befalling the applicant.
- e) The Registrar General is directed to enter the adoption order and estimated birth date of the child as 20<sup>th</sup> august, 2018 in the adopted children's register.
- f) The guardian ad litem is discharged.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 18TH DAY OF JUNE 2021**

**J.N.ONYIEGO**

**JUDGE**