



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 100 OF 2018**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF PKB – A CHILD**

**BY**

**JCB (APPLICANT)**

**JUDGMENT**

1. The sole Applicant JCB is a Kenyan citizen. She is in a Christian marriage with one TMK, which marriage was solemnized under the Marriage Act, 2014 in Nairobi on 9<sup>th</sup> July, 2016. A copy of a Certificate of Marriage of serial number [...] is on record. She has one (1) biological child of her own, a son born on 22<sup>nd</sup> February, 2009. She wishes to adopt the child known as PKB, a minor of the male sex through the Originating Summons dated 24<sup>th</sup> July, 2018.
2. From the pleadings, the court gathers that the Applicant is a project manager at [Particulars Withheld] firm. She resides in a three-bedroom house in Nairobi and professes the Christian faith.
3. Records indicate that the minor is a nephew to the Applicant having been born on 28<sup>th</sup> April, 2011 to the Applicant's brother KOB and one MCI. A copy of a Certificate of Birth of a Citizen of Kenya Occurring Abroad of serial no. [...] is on record. Since the child's biological parents were never married, he was under the care, custody and control of his mother until sometime in 2012 when his mother married one AA and moved to Dar es Salaam, Tanzania. Thereafter, the child lived under the care and custody of his maternal aunt, one JLM but at all times, his maintenance needs were catered for by his biological father K. The child's biological father however passed on on 4<sup>th</sup> April, 2015 upon which time his mother asked the Applicant to take him under her care and custody. The child has been in the continuous care and custody of the Applicant since 2015 to date. On 5<sup>th</sup> May, 2016, the Applicant was appointed legal guardian of the child.
4. Change Trust Adoption Agency prepared and filed a report dated 25<sup>th</sup> August, 2019. They had also issued a Certificate of Serial No. [...] dated 24<sup>th</sup> August, 2019 declaring the child free for adoption. The guardian ad litem SMMH filed a report dated 5<sup>th</sup> December, 2018 which was favorable and recommended the adoption of the child by the Applicant citing it the best possible chance the minor has of growing up in a healthy and loving environment.
5. An officer from the office of the Director Children's Services conducted home visits and established that the Applicant is financially and emotionally capable of providing for the up keep and education of the child. He filed a report dated 19<sup>th</sup> November, 2019. It established that the Applicant and her husband are financially and emotionally capable of providing for the child. Further that this being a kinship adoption, the child will maintain his kinship ties. It recommended the adoption for reasons that the child stands to gain by becoming the son of the Applicant. He urged that the Applicant had met all the requirements for a local adoption as provided in the statute and that the minor was thriving well in the family.
6. The Applicant has appointed her mother SB to be the legal guardian of the child. A duly signed consent is on record. Additionally, the biological mother of the minor also duly consented to the adoption order in respect of the child which consent is on record.
7. Notably, while the matter herein relates to a sole female applicant who wishes to adopt a male child, the record indicates that the Applicant herein is married. The Applicant's spouse has by an Affidavit dated 16<sup>th</sup> August, 2019 consented to the adoption of the child. I note that the Applicant was declared legal guardian of the child before the date of her marriage and the Applicant's spouse has been present in the child's life since the date of the marriage. In any event, the Applicant herein has satisfied the criteria of special circumstances applicable when a sole female applicant wishes to adopt a male child as issued by the Adoption Committee on 13<sup>th</sup> January, 2020: the Applicant is a relative to the child and his appointed legal guardian. Additionally, the Applicant has a biological child over whom she exercises parental responsibility.
8. It is important to note that the orders sought by the Applicant herein relate to a child. In law, in any matter concerning a child the best interests of a child are of paramount importance as provided for under **Article 53(2)** of the **Constitution** and **section 4(3)** of the **Children**

**Act No. 8 of 2001.**

**9.** This is not only a local adoption but also a kinship adoption since the Applicant is an Aunt to the child. The record demonstrates that the Applicant. After a careful assessment of the reports filed herein, I am convinced that the Applicant has fulfilled all the legal requirements relating to the adoption of the child. Further that the Applicant meets the social parameters that are considered relevant to her 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. Not only does the child gain a warm and loving family and maintain his kinship ties, he also gains the added advantage of a sibling.

**10.** Reasons wherefore I allow the prayers sought in the Originating Summons dated 24<sup>th</sup> July, 2018 and order as follows:

- i. The Applicant, JCB is hereby allowed to adopt **PKB**. Upon adoption he shall continue to be known as **PKB**.
- ii. His date of birth is 28<sup>th</sup> April, 2011, and the place of birth is Arusha, Tanzania.
- iii. SB is hereby appointed legal guardian of the child in the event that the Applicant dies, or is 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 authorized to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

**DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 3<sup>RD</sup> DAY OF JUNE, 2021.**

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**L. A. ACHODE**

**HIGH COURT JUDGE**