



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. E043 OF 2020 (OS)

AND

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

AND

IN THE MATTER OF BABY GW

AND

AN APPLICATION FOR ORDERS OF ADOPTION OF BABY GW

BY

SWM and his wife PNN

JUDGEMENT

1. SWM and his wife PNN the Applicants herein seek to adopt a child known as Baby GW. They filed an Originating Summons dated 3.8.2020. The Applicants were assessed by Buckner Kenya Adoption Services, a registered adoption society and taken through the adoption process and its implications. The society's case committee sitting on 21.6.19 found the Applicants to have met the legal and social parameters required for adopting a child. The child was placed with the Applicants on 1.11.19.
2. Baby GW who is estimated to have been born on 16.2.19 was found abandoned as a new-born near the banks of Agape River, in Gatongora on the same day. The child was rescued by one Jacinta Nyambura holder of national identity card No. xxxxxxxx and telephone number 0739xxxxxx. The matter was reported at Ruiru Police Station by vide Occurrence Book Number xxxx. Ruiru Children's Department made arrangements for the child to be admitted at New Life Home for temporary care and protection pending committal. On 20.3.19, the Children's Court at Nairobi vide Protection and Care Case Number 308 of 2019 formally committed the child to the same home for a period of 3 years. In its final letter dated 11.9.19 Ruiru Police Station confirmed that since the child was reported abandoned on 20.2.19, no one had come forward to claim him. The child was declared free for adoption by Change Trust on 9.10.19 vide certificate serial No. xxxx.
3. When the hearing of the matter commenced on 15.10.2020, the Court appointed DMN as guardian *ad litem* for the child pending the hearing and determination of the adoption application, in accordance with Rule 8 of the Adoption Rules.
4. The Applicants have gone through the requisite assessments, and reports in respect thereof have been duly filed. Change Trust which arranged the adoption of the child filed its report dated 9.10.19. For the Director of Children Services was filed a report dated 18.01.21 by Mary Atati, Principal Children's Officer and countersigned by Mary Mbuga, Assistant Director. DMN the Guardian *ad litem*, also filed his report dated 19.4.21. I have carefully assessed the said reports. They are all favourable, and recommend the proposed adoption.
5. I note that the child has been in continuous care and control of the Applicant for a period of about 1 year 7 months which is more than the statutory 3 months required under Section 157 of the Act. The Applicants are not younger than 25 years nor older than 65 years. They are more than 21 years older than the child. Section 158 of the Act has thus been complied with. The Applicants have been made aware of the consequences of an adoption order as well as the rights of an adopted child. They shall assume all parental rights and duties of the biological parents in respect of the child. I am satisfied that they fully understand that the adoption order is final and binding during the lifetime of the child and that the Applicants cannot under any circumstances give up the child. They further understand that the child shall have the right to inherit their property. The Applicants have demonstrated that they have the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment. The Applicants propose to name the child TG.
6. The Applicants have nominated brother to the second applicant, JMN to be the legal guardian of the child, in the event of the Applicants

dying or becoming incapacitated before the child is of full age. The proposed legal guardian was however not availed to the Court for examination as to his readiness, willingness and ability to be legal guardian of the child. No reason was given to the Court for his failure to appear before Court. Accordingly, the Court is unable to appoint him as legal guardian for the child. In this regard, the Court does note that under Section 164 of the Act, appointment of a guardian in the case of a local adoption, is not mandatory

7. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interests of the child that he be adopted by the Applicants. The Court is further satisfied that all the legal requirements for a local adoption have been met and makes the following Orders as prayed in the Originating Summons herein:

- a) The Applicants SWM holder of national identity card number xxxxxxxx and his wife PNN holder of national identity card xxxxxxxx are hereby allowed to adopt Baby GW who shall henceforth be known as TG.
- b) The child's date of birth is hereby declared to be 16.2.19.
- c) The Child is hereby declared to be a Kenyan citizen by birth.
- d) I direct the Registrar General to enter this order in the Adoption Register.
- e) DMN, the guardian *ad litem* is hereby discharged.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JULY, 2021

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **Court Assistant**