



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. 14 OF 2012**

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

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY S**

**BY MWN (APPLICANT)**

**JUDGMENT**

1. The Applicant MWN was previously married to one PN, which marriage was solemnized under customary law in 1982. They however separated in 1994 and the Applicant has remained single since then. She does not have any children of her own. She wishes to adopt the female child known as Baby S through the originating summons dated 13<sup>th</sup> January, 2012. In her pleadings, the applicant states that she is a Kenyan citizen who resides in Nairobi County. She operates a business that involves the sale of clothes and professes the Christian faith.
2. The records before court indicate that the minor in this matter was presumably born on 3<sup>rd</sup> December, 2008. On 3<sup>rd</sup> September, 2010 she was found abandoned at [Particulars Withheld] Quarters in Nairobi where she was rescued by Good Samaritans. The matter was reported to Langata Police Station where it was booked vide OB No. xxxx. From the police station the child was admitted at Thomas Bernardo House for care and protection pending a committal order.
3. On 22<sup>nd</sup> November 2010 the Senior Resident Magistrate sitting in Nairobi vide P & C xxx of 2010 committed the child to Thomas Barnardo House. On 8<sup>th</sup> March, 2011 Langata Police issued a final letter confirming that the biological parents of the child were not traced, nor did anyone come forward to claim the child. On 29<sup>th</sup> March, 2011 the Applicant took the child into foster care with a view of adopting. A foster agreement was signed on the same day.
4. Prior to the hearing of the adoption application, Kenya Children's Home Adoption Society prepared and filed a report dated 16<sup>th</sup> November, 2011 and a Certificate Serial Number xxx declaring the child free for adoption. The guardian ad litem Asenath Wamuyu Mucheru filed a report filed on 23<sup>rd</sup> January 2015 which was favourable and recommended the adoption of the child by the Applicant.
5. An officer from the office of the Director of Children's Services conducted home visits and established that the applicant is financially and emotionally capable of providing for the upkeep and education of the child. They filed an initial report dated 29<sup>th</sup> October, 2013 and a supplementary report dated 27<sup>th</sup> July, 2021 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming a child of the Applicant. She will also grow up in a stable home and the Applicant was found to have fulfilled the statutory requirements for Adoption.
6. This is a local adoption and from the record, the Applicant has fulfilled all the legal requirements relating to the adoption of the child. The consent of the biological parents was dispensed with since the child was abandoned at infancy and the parents could not be traced to give their consent. The child who is now 13 years old was present in court during the virtual hearing. She appeared lively and interacted well with the Applicant, with whom she appeared to have bonded well.
7. I also note that the applicant was born in 1961 and is 60 years old. She is therefore within the age limit eligible to adopt being an adult having attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years as provided by **Section 158 (1)** of the Children's Act No. 8 of 2011. It is also noteworthy that the Applicant has had uninterrupted care and custody of the child for ten years and is the only parent the child knows.
8. Consequently, my considered view is that it is in the best interest of the child to be adopted by the Applicant. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 13<sup>th</sup> January, 2012 and Order as follows:

- i. The Applicant MWN be and is hereby allowed to adopt Baby S who shall henceforth be known as SNW (minor).

ii. Her date of birth is 3<sup>rd</sup> December, 2008 and she is presumed to have been born in Kenya in accordance with Article 14(4) of the Constitution, and her place of birth shall be Nairobi.

iii. JMM is hereby appointed as the legal guardian 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 Adopted Children's 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 7<sup>TH</sup> DAY OF OCTOBER, 2021**

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**L. A. ACHODE**

**HIGH COURT JUDGE**

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