



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. E 020 OF 2021 (OS)**

**AND**

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

**AND**

**IN THE MATTER OF BABY AK**

**AND**

**AN APPLICATION FOR ORDERS OF ADOPTION OF BABY AK**

**BY**

**KNM and his wife JWN**

**JUDGEMENT**

1. By the Originating Summons dated 5.3.21 the `KNM and his wife JWN seek to adopt a child known as Baby AK. The Applicants have been married for since 30.3.96. They have three children of their own. The Applicants were assessed by Kenyans to Kenyans Peace Initiative Adoption Society a registered adoption society and taken through the adoption process and its implications. The society's case committee sitting on 2.2.18 approved the Applicants as suitable to adopt a child of their preferred sex.

2. The reports on record indicate that the child was born on 7.10.17 to one IK. IK is said to have died as a result of severe anaemia attack due to post-partum haemorrhage. The child was left under the care of her grandparents who were unable to take care of the child since they have other grandchildren to take care of. The first Applicant is a cousin to the child's late mother. The Applicants agreed to the child's grandparents request to take care of the child. At the age of 3 months, the child was handed over to the Applicants by the grandparents who by their letter dated 19.1.18 indicating their willingness to have the child adopted by the Applicants. On 1.3.18 the grandparents signed a final consent for the adoption of the child. This is therefore a kinship adoption. The child is in PP1 attends school at [Particulars Withheld].

3. In compliance with Section 156 of the Children Act, Kenyans to Kenyans Peace Initiative Adoption Society vide its certificate serial number [xxxx], declared the child free for adoption on 6.4.18.

4. By an order of this Court of 24.6.21, CWK was appointed 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.

5. The Applicants went through the requisite assessments, and reports in respect thereof have been filed. Kenyans to Kenyans Peace Initiative Adoption Society which arranged the adoption of the child filed their reports on dated 21.5.21. For the Director of Children Services was filed a report dated 19.8.21 by Ezekiel Kimani, Assistant Director, and countersigned by Hyod Isadia, Deputy Director, Children Services. On her part, CWK the Guardian *ad litem*, filed her undated report. I have carefully assessed the said reports. They are all favourable, and recommend the proposed adoption.

6. In an unfortunate and tragic turn of events, the male applicant died on 19.7.21 during the pendency of this matter and before he was examined by the Court. The female applicant has asked this Court to grant the orders sought to both her and the male applicant posthumously. It must be noted that an Adoption order permanently deprives biological parents of their parental rights over a child and all rights, duties, obligations and liabilities of the parents are extinguished. Such rights and duties are then exercised by adoptive parents. The challenge then with granting orders for adoption to the male applicant posthumously is that there will be no party to bind. Who would

exercise the parental duties of the male applicant in view of his demise?

7. Further, an adoption order is personal in nature; it is an order *in personam*. Black’s Law Dictionary, 9th Edition defines a judgment *in personam* as:

**An action is said to be in personam when its object is to determine the rights and interests of the parties themselves in the subject-matter of the action, however the action may arise, and the effect of a judgment in such an action is merely to bind the parties to it. A normal action brought by one person against another for breach of contract is a common example of an action in personam.**

8. A prayer for an order *in personam* cannot survive the applicant. The request that the adoption order be granted to both applicants notwithstanding the demise of the first applicant, is therefore untenable. The application will therefore only proceed in respect of the female applicant.

9. I note that the child has been in continuous care and control of the Applicant for a period of about 3 years and 9 months which is more than the statutory 3 months required under Section 157 of the Act. The Applicant is not younger than 25 years nor older than 65 years. She is more than 21 years older than the child. Section 158 of the Act has thus been complied with. The Applicant has been made aware of the consequences of an adoption order as well as the rights of an adopted child. She shall assume all parental rights and duties of the biological parents in respect of the child and cannot under any circumstances give up the child. I am satisfied that she fully understands that the adoption order is final and binding during the lifetime of the child and that the child shall have equal right to inherit her property alongside her biological children. The Applicant has demonstrated that she has the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment. My observation of the applicant, her biological children and the child, left me with no doubt that they have all bonded well and that they have provided a loving home environment for the child to grow up in. The Applicant proposes to name the child AKNN.

10. The Applicants nominated JFNM and NGWN 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. There is on record a duly signed consent to act as legal guardians of the child dated 29.11.17.

11. 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 Applicant. 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 Applicant JWN holder of national identity card number 1088xxxx is hereby allowed to adopt Baby AK who shall henceforth be known as AKNN.
- b. I direct the Registrar General to enter this order in the Adoption Register.
- c. JFNM and NGWN are hereby appointed legal guardians of the child, in the event of the Applicant dying or becoming incapacitated before the child is of full age.
- d. CWK, the guardian *ad litem* is hereby discharged.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1<sup>ST</sup> DAY OF OCTOBER, 2021**

**M. THANDE**

**JUDGE**

**In the presence of: -**

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

..... **Court Assistant**