



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. 19 OF 2020**  
**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001**  
**AND**  
**IN THE MATTER OF APPLICATION FOR ADOPTION OF BABY T**  
**JKM.....1<sup>ST</sup> APPLICANT**  
**FWG.....2<sup>ND</sup> APPLICANT**  
**JUDGMENT**

1. Before this Court is the amended Originating Summons dated 7<sup>th</sup> October 2021 by which the Applicant seeks the following orders: -

**“1. THAT JGG and FLT be and is hereby appointed as Legal Guardian of the Subject child herein for the purpose of these proceedings.**

**2. SPENT**

**3. THAT the Applicant be and is hereby authorized to adopt the subject child herein and the child be called EWK.**

**4. THAT the Registrar General be and is hereby order to make the appropriate entries in the Adopted Children’s Register in respect of EWK.**

2. The summons was supported by the statement of the two applicants and was canvassed by way of viva voce evidence via the online platform.

3. The 1<sup>st</sup> Applicant **JKM** and the 2<sup>nd</sup> Applicant **FWK** are a couple who got married to each other in the year **1994** Their union was not blessed with any child. The couple adopted a first child in the year **2010** – the said child is now aged **twelve (12)** years. They now wish to adopt a second child, in order to expand their family.

4. The Applicant both stated that their extended families fully supports their intention to adopt and have welcomed the Subject child into the family. The Applicants both confirm that they fully understand the legal implications of an adoption order and confirm that they will accord the child all the rights due to a biological child.

5. **PW 3 WHITNEY MUSINGO** from **KKPI** Adoption Agency confirms that the Agency have filed their report in which they recommend the adoption.

6. **PW 4 EZEKIEL KIMANI** is a Childrens Officer with the **Directorate of Children’s Services**. He confirms that they have filed their report dated **30<sup>th</sup> July 2021** in which they recommend that the adoption be allowed.

**ANALYSIS AND DETERMINATION**

7. I have considered the summons before me together with the various reports filed in respect thereto as well the evidence adduced in court.

The pre-requisite for an adoption order are set out in **section 156(1)** of the **Children’s Act 2001** which provides as follows: -

**“159(1) No arrangements shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”**

8. The Subject child was born on **9<sup>th</sup> June 2013** as evidenced by the Birth Certificate serial Number **xxxxxxx** which is annexed to the summons. The child is therefore now aged **eight (8)** years old and is well above the **six (6)** weeks age limit provided for in the law.

9. The **KKPI Adoption Agency** which is a registered Adoption Society have annexed to their report a copy of their Certificate Serial No.**0040 dated 25<sup>th</sup> July 2011** declaring the child free for Adoption. Accordingly, I am satisfied that the Legal prerequisites for an adoption order have been met.

10. The court is required to analyze the evidence on record to determine whether the Applicants are suitable adoptive parents. The Applicants are both Kenyan Citizens as evidenced by the copies of their National Identity Cards which have been annexed to the summons.

11. The couple got married to each on **26<sup>th</sup> November 1994** as proved by the annexed copy of their marriage certificate Serial No. **xxxxxx**. Their union has not been blessed with any children although the Applicants have previously adopted a daughter who is now aged **twelve (12) years**. They are now desirous of adopting another child in order to expand their family.

12. The Applicants confirm that their families are receptive of their intention to adopt the subject child and confirm that they both understand the legal implications of an adoption order. The Applicants who are both Christians intend to raise the child in the Christian faith. They are both active members of **Deliverance Church [Particulars withheld]** where the 1<sup>st</sup> Applicant is a Pastor. Indeed they have annexed to the summons a copy of a recommendation letter dated **21<sup>st</sup> February 2014** written by **Bishop (Dr) Jimmy Kimani of Deliverance Church [Particulars withheld]**.

13. The Applicants are both gainfully employed. The 1<sup>st</sup> Applicant works as a **Technical Sales Manager** with **[Particulars withheld] Kenya Ltd**. He has annexed to the summons copies of his payslips as proof of his employment, as well as copies of his Bank Statements.

14. The 2<sup>nd</sup> Applicant runs a business known as **[Particulars withheld] Ltd. Ltd**. Together the Applicants earn a joint monthly income of approximately **Kshs 1.0 million**. The couple also own various plots of land in **Nanyuki** and **Muranga** as well as owning their own home in **[Particulars withheld] Estate**. I am satisfied that the Applicants are financially stable and are capable of providing for the needs of their two children.

15. The Applicants were both examined and found to be physically and mentally fit to raise children. They have annexed copies of clearance certificates issued by the **Kenya Police Service** proving that neither has a criminal record.

16. The Applicants have appointed the sister of the 2<sup>nd</sup> Applicant and her husband as legal Guardian for the child. The legal Guardian **JG** and **FT** have both signed consents to act as legal Guardians for the child.

17. Finally, the Applicants are not new to adoption having previously adopted a child in the **year 2010** which child they are successfully raising. Therefore based on the material placed before me I am satisfied that the Applicants are suitable adoptive parents.

18. The Subject child was born on **9<sup>th</sup> June 2013** at the **Mbagathi District Hospital** to one **MNM**. The child's biological mother who was already a jobless single mother of **three (3)** sons felt that she was not in a position to care for her baby as she was not able to provide for her three sons who were infact living with her father in **Muragua County**. The child biological mother therefore decided to offer up her child for adoption.

19. Upon the mother's indication of her intention to give up her baby for adoption a social worker from **Buckner Adoption Agency** collected the child and took her to **Happy Life Childrens Home**. On **24<sup>th</sup> August 2013** the Children Court committed the child to the said home for care and protection. Thereafter, on **1<sup>st</sup> January 2015** the child was placed in the custody of the Applicants under a Foster Care Agreement.

20. **Section 158 of the Children Act, 2001** provides as follows:-

**“(4) Subject to section 159 an adoption application shall be accompanied by the following written consents to the making of an adoption order in respect of any child—**

**(a) the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child;**

**(b) .....**”.

21. Likewise **section 163 (1) (a)** of the same Act provides –

**“(1) The court before making an adoption order shall be satisfied—**

**(a) that every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights.”**

22. As stated earlier the biological mother of the Subject child one **MNM** voluntarily gave up the child for adoption immediately after delivering said child. Annexed to the summons is a handwritten letter dated **6<sup>th</sup> June 2013**. The letter which is written in Kiswahili and signed by **MNM** (the child’s mother) to **Buckner Adoption Society** indicating the wish of the biological mother to give up her child for adoption.

23. Also annexed to the summons is an Affidavit of consent to the Adoption dated **18<sup>th</sup> July 2014** which consent is signed by **MNM of ID No xxxxxxxx** in the presence of a **Commissioner for Oaths**. In that Affidavit the child’s biological mother confirms that she was taken through the explanatory Memorandum on Adoption by an officer from the Adoption Society. The mother further averred that she understood that the effect of adoption order would be permanently transfer the rights of the biological parent to the adoptive parents.

24. I note that the child’s mother signed this consent more than **one (1) year after** she had handed over the child to the adoption Agency. Accordingly, I find that the mother was given ample time to change her mind if she so wished. The fact that one year after giving up her child the mother still signed the consent for adoption is indicative of her resolve to give up her child for adoption.

25. In the premises I am satisfied that the child’s biological mother gave a proper and informed consent to this adoption and that the necessary consent as required by **section 158 (4) (a) Children Act** has been obtained.

26. In deciding upon any matter involving a child courts are obliged to give priority to the best interests of the said child. **Section 4(2) of the Children Act** provides:-

**“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.** (Own Emphasis)

27. This is a child whose mother was unable to keep and raise her due to poor socio-economic conditions. In the circumstances, the child faced an uncertain future living in children’s homes and other similar institutions. This adoption allows the child an opportunity to be raised in a loving and stable Home environment.

28. A Home visit was conducted on **22<sup>nd</sup> March 2021** by the **Director of Children Service**. The Applicants were found to be living in a spacious six bedroomed house in **[Particulars withheld] Estate**. The house was in its own compound and surrounded by a perimeter fence for security. There was adequate rooms for the child to play. The court was able to see the child online. She was a healthy cheerful albeit shy girl who was comfortable in the presence of the Applicants.

29. I note that the Subject child has now been living with the Applicants in their home since **January 2015** a period of **six (6) years**. Undoubtedly, the child has developed a bond with the Applicants and this is the only family she knows. I have perused the reports prepared by the **Adoption Agency**, the **Guardian Ad Litem** as well as the **Director Childrens Services**. All three reports are positive and all recommend the adoption.

30. I find that this adoption serves the best interest of the child and accordingly, I allow this application and make the following orders: -

- (1) The Applicants be and are hereby authorized to adopt the child known as ‘Baby T’**
- (2) Upon Adoption the child shall be known as EWK.**
- (3) The Registrar General is directed to make the appropriate entry in the Adopted Children’s Register.**
- (4) JGG and FLTare appointed as legal Guardian for the child.**
- (5) No orders on costs.**

**DATED IN NAIROBI THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2021**

.....

**MAUREEN A. ODERO**

**JUDGE**