



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. E049 OF 2021**

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

**AND**

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

**BY**

**JWKM AND JNK (APPLICANTS)**

**JUDGMENT**

1. The Applicants JWKM and JNK are in a monogamous marriage under Kikuyu Customary Law since April, 2012 which was thereafter solemnized at the Office of the Registrar of Marriages on 24<sup>th</sup> November, 2017. A Certificate of Marriage of serial number xxxx is on record. They have no biological children of their own but have an adopted son, one JFK who was adopted by an order of the court given on 5<sup>th</sup> April, 2019. A Certificate of Entry in the Adopted Children Register Entry number xxx/xxx/xx of serial number xxxx is on record. They wish to adopt the child known as Baby TK, a minor of the female sex through the Originating Summons dated 17<sup>th</sup> March, 2021.

2. From the pleadings, the court gathers that the male Applicant is a logistics [particulars withheld] while the female Applicant is an accountant by profession but has since November 2020 been running her own Cereal business. They reside in a three-bedroom house in [Particulars withheld] and both profess the Christian faith.

3. The child who is the subject of this adoption was found abandoned near a mosque in Dandora Phase II in Nairobi on 12<sup>th</sup> February, 2019. The child, who was approximately two days old at the time, was rescued by a Good Samaritan who reported the matter reported to Dandora Police Station where it was recorded vide OB. No. 68/12/02/2019. The child was referred to Imani Children's Home - Nairobi where she was admitted on 13<sup>th</sup> February, 2019 for further care and protection. Pursuant to a recommendation by the Embakasi Sub-County Children's Office, the She was committed to the care and custody of the Home on 24<sup>th</sup> October, 2019 by the Children's Court at Nairobi vide P&C Case No. 1362/2019.

4. The Officer Commanding Station (OCS), Dandora Police Station had vide an initial letter dated 13<sup>th</sup> February, 2019 stated that the station had received the child having been found abandoned on 12<sup>th</sup> February, 2019. Vide a final letter dated 12<sup>th</sup> September, 2019, the OCS Dandora Police Station confirmed that the station had not received reports from any person or organization claiming parenthood or guardianship over the child. On 22<sup>nd</sup> November, 2019 the Applicants took the child into foster care with a view of adopting upon signing a Care Agreement. Since then, the child has been in the continuous care and custody of the Applicants.

5. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated 23<sup>rd</sup> June, 2021 in which it is stated that they had verified all the information and documents provided and were satisfied that they related to the subject child. The KKPI Adoption Society had issued a Certificate of Serial No. xxx dated 15<sup>th</sup> November, 2019 declaring the child free for adoption. The guardian ad litem GVC filed a report on 20<sup>th</sup> August, 2021 which was favorable and recommended the adoption of the child by the Applicants for reasons that they were nurturing and had shown parental commitment and willingness to give the child a stable and loving home.

6. An officer from the office of the Director of Children Services conducted home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child. He prepared and filed a report dated 4<sup>th</sup> August, 2021 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants as opposed to living all her life in an institution as an abandoned child. It was noted that the home environment was conducive for the growth and development of the child. Further that the Applicants have met all the legal requirements for adoption as laid out in the

**Children Act.**

7. It is important to note that the orders sought by the Applicants herein relate to a child. In any matter concerning a child, the best interests of the child are of paramount importance as provided for under **Article 53(2)** of the **Constitution** and amplified by **section 4(3)** of the **Children Act No. 8 of 2001**.

8. This is a local adoption and the Applicants, in my opinion, have fulfilled the requirements for a local adoption under the **Children Act**. The Applicants are aged 45 and 34 years respectively, having been born on 6<sup>th</sup> December, 1975 and 5<sup>th</sup> March, 1987. They are therefore within the age bracket eligible to adopt as provided under **section 158(1)** of the **Children Act**. They have also proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. I am therefore convinced that the Applicants meet the social parameters that are considered relevant to their 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.

9. 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 the consent. The Applicants' family members are aware of the proposed adoption and support it.

10. AWM, a brother to the male applicant, and his wife LMN, have by a joint affidavit sworn on 11<sup>th</sup> March, 2021 consented to be appointed as legal guardians in the event that the Applicants are incapacitated and cannot care for the child.

11. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicants and the child during the virtual hearing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Not only does she gain a warm and loving family, she also gains the added advantage of a sibling.

12. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 17<sup>th</sup> March, 2021 and order as follows:

- i. The Applicants, JWKM and JNK are hereby allowed to adopt **Baby TK** who shall henceforth be known as **JW**.
- ii. Her date of birth shall be presumed to be 10<sup>th</sup> February, 2019. She is presumed to have been born in Kenya in accordance with **Article 14(4)** of the **Constitution**, and the place of birth shall be Nairobi.
- iii. AWM and LMN are hereby appointed legal guardians of the child in the event that the Applicants die, or are 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 authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem be and is hereby discharged.

It is so ordered.

**DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2021.**

.....

**L. A. ACHODE**

**HIGH COURT JUDGE**