



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ADOPTION CAUSE NO.12 OF 2018**

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

**AND**

**IN THE MATTER OF: BABY SSI aka R (MINOR CHILD)**

**AND**

**IN THE MATTER OF: AN APPLICATION FOR ORDERS OF**

**ADOPTION OF BABY SSI aka R (MINOR CHILD)**

**BETWEEN**

**VWN.....APPLICANT**

**AND**

**BUCKNER KENYA ADOPTION SERVICES.....RESPONDENT**

**JUDGEMENT**

1. VWN the applicant herein moved this honourable court vide originating summons dated 3<sup>rd</sup> July, 2018 seeking orders as hereunder;

- a) That EN an adult female of sound mind residing in Malindi town be appointed guardian ad litem in this case.
- b) That VWN be authorized to adopt SSI aka R (minor child).
- c) That the child Baby SSI aka R be declared a Kenyan citizen.
- d) That the name Baby SSI aka R to change to SNW.
- e) That the children officer in Malindi Town Kilifi County to prepare and file child social report.
- f) That the Registrar General be directed to enter the name of the child in the adopted children's register in the prescribed form.
- g) That costs of this summons be costs in the cause.

2. The application is supported by the averments contained in the statement in support thereof sworn on 3<sup>rd</sup> July, 2018. The applicant is an adult Kenyan citizen born in 1974. She is single having been in a cohabitation relationship from 1996 to 2014 which broke due to lack of a child. The motivation to adopt the baby has been ignited by; the desire to be a mother; urge to exercise her parental skills and, the desire to have her own family as well. Regarding her occupation, the applicant is a business lady who is self-employed.

3. The child herein is estimated to have been born on 6<sup>th</sup> January, 2016 at **Kayole 2 Sub District Hospital** to **Ms. MMK** who gave her for

adoption citing financial instability as she had three other children she was taking care of. **M** willingly surrendered the child for placement and gave her final consent on 29<sup>th</sup> September, 2017. The child was committed into the legal custody of **IMANI CHILDREN'S HOME** for care and protection vide **PROTECTION AND CARE CASE NO.xx OF 2016 at the Children's Court in Nairobi**.

4. Consequently, in its meeting held on **15<sup>th</sup> November, 2017**, the case committee of **Buckner Kenya Adoption Services (BKAS)** declared the child free for adoption and a **Certificate S/No.xxxx** thereof issued.

5. Upon instituting these proceedings, **EN** was on 6<sup>th</sup> February, 2019 appointed guardian ad litem. The Children's Officer Malindi Sub County and guardian ad litem were directed to file their respective social inquiry reports within 14 days and 21 days respectively. The guardian ad litem passed away and was substituted with one **EWN** on 24<sup>th</sup> February, 2021.

6. Preceding the hearing, the County Coordinator for children services Kilifi County filed his report dated 27<sup>th</sup> October, 2020 recommending the adoption. Equally, the guardian ad litem filed her report on 16<sup>th</sup> April, 2021 recommending the adoption. During the hearing, the applicant urged the court to allow the application to enable her adopt the baby. She stated that she understood the consequences of adoption and that it's permanent.

7. I have considered the application herein, materials in support and evidence by various witnesses. Issues that emerge for determination are; whether the baby is available for adoption; whether the applicant is fit to adopt the baby and most importantly, whether the adoption is in the best interests of the child.

8. The subject baby is estimated to have been born on 6<sup>th</sup> January, 2016 at Kayole 2 Sub District Hospital to **MMK** who gave her up for adoption since she had three other children and she did not see the possibility of taking care of the fourth one due to financial instability. She subsequently gave her consent for the child to be adopted. The child has since been declared free for adoption.

9. On the baby's nationality, it is clear the baby was born in Kayole 2 Sub-District Hospital by a Kenyan parent and currently staying with the applicant at Malindi, Malindi sub- County within the Republic of Kenya. To that extent, the child is a Kenyan citizen. The child is above 6 weeks and below 18 years which provision falls within the age bracket of any adoptive baby pursuant to section 156 of The Children's Act. Further, Section 157 does recognize any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. I have no doubt the child is fit for adoption.

10. Concerning the applicants' suitability, she is a Kenyan citizen thus qualifying these adoption proceedings as a local one. The applicant herein is 47 years old which places her under the age bracket of not less than 25 years and not more than 65 years for an adoptive parent in compliance with section 158 of the children's act. The applicant has been described as financially stable being a business lady with various assets as indicated in the Director of Children Services Report. She is caring, loving and a Christian with no criminal record. Since placement of the minor into her custody, the child has fully bonded. She also understands the consequences of adoption and that it is permanent. She appreciates the role of a parent and admits she will treat the baby like her biological child.

11. **In re JNA [2018] eKLR**, L.A. Achode, J stated that;

**"I have perused the entire record and find 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."**

It's my view that the applicant has met the necessary requirements to adopt the baby.

12. On the question of whether the adoption is in the best interests of the baby, guidance can be drawn from Article 53(2) of The Constitution and Section 4(2) and (3) of The Children Act which underscores the best interests of a child principle as the primary consideration before making any decision concerning a baby. See the decision in the case of **IN Re B (BABY) [2018] eKLR** where the court stated that;

**"The purpose of Kenya's Constitution and Children's Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in every adoption cause provision is of the best interest of that very child..."**

**It is that family unit that the constitution contemplates under Article 45 which also has to take responsibilities in fulfilling the obligations enjoined in Article 53 of the same constitution."**

13. The child herein was surrendered willingly for adoption by her mother **MMK**. like any other child she is in need of parental care and guidance. Besides, she needs basic necessities like food, shelter, education, and clothing. She has fully integrated with the applicant. It is obviously in the best interests of the child that this adoption application be allowed.

14. Accordingly, the application is allowed with orders that:

**a) The child is declared a Kenyan citizen by birth**

**b) The applicant is authorized to adopt BABY SSI aka R who shall henceforth be known as SNW.**

c) The Registrar General is directed to enter the adoption order and estimated birth date of the child as 6<sup>th</sup> January, 2016 in the adopted children's register.

d) The guardian ad litem is discharged.

e) That AW is adopted as the legal guardian to the baby in the event of any eventuality befalling the applicant.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 5TH DAY OF NOVEMBER 2021.

J.N. ONYIEGO

JUDGE