



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. E005 OF 2021**

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

**BY**

**MK AND JRH (APPLICANTS)**

**JUDGMENT**

1. The Applicants MK and JRH are in a civil union which was solemnized on 21<sup>st</sup> August, 2014 in the Ministry of Justice and Islamic Affairs in the Kingdom of Bahrain. They have one (1) biological child of their own. The female Applicant has a daughter from a previous relationship. They wish to adopt the child known as Baby SW, a minor of the female sex through the Originating Summons dated 22<sup>nd</sup> January, 2021.
2. From the pleadings, the court gathers that the female Applicant is a Kenyan citizen whereas the male Applicant is an American citizen. There is on record a Kenyan passport of number xxxxxxxx and a United States Passport of number xxxxxxxxxx in respect of the female and male Applicants respectively. They currently reside in [Particulars Withheld] where the female Applicant works as a personal trainer while the male Applicant works as a school administrator. Both Applicants profess the Christian faith.
3. The child who is the subject of this adoption is a niece to the Applicants having been borne by the female Applicant's sister LMN who died on 5<sup>th</sup> February, 2009. A copy of a Certificate of Death of serial number xxxxx is on record. Upon her biological mother's demise, the minor was taken up by her maternal grandparents who assumed parental responsibility over her with the assistance of the Applicants, who cater to the minor's financial needs including all her school expenses. The identity and whereabouts of the biological father of the child are unknown.
4. Prior to the hearing of the adoption application, KKPI Adoption Society prepared and filed a report. They also issued a Certificate of Serial No. xxx declaring the child free for adoption. The guardian ad litem EWG filed a report dated 25<sup>th</sup> August, 2021 which was favorable and recommended the adoption of the child by the Applicants. The report noted that the child is an orphan and her immediate guardians are elderly and sickly and the adoption would therefore ensure that the best interest of the child is promoted.
5. An officer from the office of the Director Children's 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 filed a report dated 20<sup>th</sup> August, 2021. The Applicants were interviewed at their home in [Particulars Withheld], Nairobi while the child was interviewed in [Particulars Withheld], Embu where she attends school. The home of the child's grandparents in [Particulars Withheld] was equally visited and her grandparents interviewed as well. The report recommended the adoption for reasons that the child stands to gain by becoming the daughter of the Applicants given the fact that she is an orphan and her immediate guardians are elderly and sick and incapable of taking proper care of the child.
6. The report further stated that the Applicants had met all the requirements for a local adoption as provided in the **Children Act No. 8 of 2001**. That despite the fact that the male Applicant was an American citizen, he is married to the female Applicant who is a Kenyan citizen and they have one (1) biological child together. Therefore, that by dint of the fact that the Applicant is related to the child and is a Kenyan citizen, the adoption can be construed as a local adoption.
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 what is 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 statutory requirements for a local adoption. Despite the male Applicant being an American citizen, this qualifies as a local adoption by dint of the female Applicant to whom he is married, and who is a Kenyan citizen. This is also a kinship adoption since the child is a niece to the Applicants.
9. PNK, a brother to the female Applicant and his wife VNN have by a Consent dated 22<sup>nd</sup> January, 2021 consented to be appointed as legal

guardians in the event that the Applicants are incapacitated and cannot care for the child.

10. The child's presence was dispensed with at the virtual hearing of the application since this is a kinship adoption and the child was in school at that date. The child had however previously appeared before the court.

11. After a careful assessment of the reports filed herein I am 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. Additionally, this is a kinship adoption since the female Applicant is a sister to the child's biological mother. Not only does the child gain a warm and loving home and maintain her kinship ties, she also gains the added advantage of siblings.

12. Based on the foregoing, I allow the prayers sought in the Originating Summons dated 22<sup>nd</sup> January, 2021 and order as follows:

- i. The Applicants MK and JRH are hereby allowed to adopt the female child known as **Baby SW** who shall henceforth be known as **SW**.
- ii. Her date of birth is 10<sup>th</sup> October, 2008, and the place of birth is [Particulars Withheld].
- iii. PNK and VNN 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 authorized to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

**DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 9<sup>TH</sup> DAY OF DECEMBER, 2021.**

.....

**L. A. ACHODE**

**HIGH COURT JUDGE**