



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

ADOPTION CAUSE NO. E002 OF 2021

IN THE MATTER OF THE ADOPTION OF BABY GW (CHILD)

GWM..... 1ST APPLICANT

CKWM.....2ND APPLICANT

VERSUS

RIPPLES INTERNATIONAL ADOPTION CENTRE.....RESPONDENT

JUDGMENT

The Application

1. By an Originating Summons dated 5th March 2021, the Applicants who are spouses and Kenyan citizens aged 61 and 59 respectively and working as Public Health Consultant and Chief Nurse respectively in the Tharaka-Nithi County and Embu Level 5 Hospital, have sought to adopt the child subject of these proceedings with whom they have been in continuous possession, care and custody since 2019.

Availability of the child for adoption

2. The child, a female aged 4 years 4 months (**DoB 23/8/xxxx**) was given up for adoption by her parents both of whom have given their consent for the adoption dated 24/8/2018 when the child was a day old, for reasons set out there that *“we have five children and we do not have money to bring up another child and we do not want her to suffer.”*

3. The child was on 11/11/2017 declared free for adoption by the Case Committee of Ripples International Adoption Centre, the adoption society pursuant to Section 156(1) of the Children Act.

Best Interests of the Child

4. There can be no doubt that the best interests of the child whose burden of upbringing, her biological parents are unable to bear, lie with adoption by willing, loving and caring adoptive parent(s) who are able to provide for her needs, care and protect her, and give her a home and status which allows her to gain an inheritance for her future life. The only issue that arises, therefore, is whether the Applicants are suitable adoptive parents, and whether they are compatible with the child in order to build a family bond necessary for the welfare of the child and whether the statutory requirements for such adoption are fulfilled.

The Adoptive Parents

5. The Applicants are persons of means with income and resources from movable and immovable property on which they are able to provide for the child, in addition to their two biological children now and in the future. This fact was testified to by the Applicants themselves on oath before the Court and by the reports of the Sub-County Children Officer, Mr. Joseph Mburu and the Guardian *Ad Litem* Ms. GG, who respectively filed affidavits in Court on 29/10/21 and 3/11/2021, vouching that *“the applicants have financial ability to support the needs of the subject until she becomes independent”* and *“the parents are emotionally, spiritually, physically and financially capable of raising [the child] together with other children.”*

6. The adoptive Applicants are qualified under the age requirements of Section 158 (1) (a) of the Children Act both being well over 25 years old and at least 21 years older than the child and none has attained the age of 65 years.

Statutory consents

7. In accordance with Section 158 (4) of the Children Act, the written consent of the child's biological parents was exhibited to accompany the adoption application.

Legal Guardian

8. Pursuant to Section 164 (1) of the Children Act, the Court examined on oath Ms. M N W, the person presented by the Applicants as a legal guardian and whose prior consent thereto was given "*in writing to the guardian of the child in the event of death of the adopter or adopters where two spouses have applied for the adoption order, dying becoming incapacitated before the child is of full age,*" through a consent dated 7/10/2017.

Family support

9. The Court established by examining the adult children of the adoptive Applicants, MW (26) and MM (20) that they understood the nature and consequences of the adoption order. The two adult children of the Applicants are happy to have a little sister in the family. On being questioned by the Court, the 2nd Applicant confirmed on oath that the extended family of the Applicants are aware and they all support the Applicants in the adoption.

The Child's relationship with the Applicants

10. The Children Officer's report confirms that "*the two applicants and the subject related well during the interview.*" The report of the Guardian Ad Litem observed that the child "is very happy, healthy, and jovial with the family. Her self-esteem is also high a sign that she gets space to give her opinions, show her feelings, express her needs without being intimidated. She looks comfortable with both parents and other siblings."

11. From its own observation during the proceedings before it, the court minuted on 5/11/2021 that –

"The child aged 4 years 3 months appears to be at home with the applicants and the brother. She is happy and struts through the court from one applicant to the other and the sister M. She has answered questions by the court in an intelligent and confident way and considers the 2 applicants as Dad and Mum, and M and M as brother and sister."

12. The Applicants have been placed with the child since 15/11/2019 when she was 2 years 4 months, and have, therefore, lived together for more than the requisite period under Section 157 (1) of the Children Act – "*in continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application....*" The Applicants and the child were evaluated by the Adoption Society herein before the placement and adoption proceedings were commenced.

Verdict

13. The Court finds that it is in the best interests of the child to make the adoption order; that the Applicants are suitable, qualified and able adoptive parents who understand the nature of the adoption process and agree to give effect to the child's ensuing rights; and that the child and the Applicants have bonded well as a family together with the Applicants' own biological children, and the Applicants' extended family and friends support the adoption.

ORDERS

14. Accordingly, for the reasons set out above, the Court makes the following orders as prayed in the Originating Summons dated 6/3/2021:

- 1. The Applicants, Mr. GWM and Mrs. CKW of P.O. Box xxxx – 60100 Embu are authorized to adopt the child subject of these proceedings pursuant to Section 163 (1) of the Children Act.**
- 2. The child herein adopted shall henceforth be known as N K.**
- 3. The Registrar General shall make the appropriate entries in the Adopted Children Register and issue a Certificate of Adoption and a Certificate of Birth in the name of NK.**
- 4. That Ms. MNW of P.O. Box xxxx- 00100 Nairobi is appointed as Legal Guardian of the child pursuant to Section 164 (1) of the Children Act.**
- 5. The Guardian Ad Litem, Ms. GGis on completion of these proceedings discharged pursuant to Section 160 (4) of the Children Act.**
- 6. Costs in the Cause.**

Order accordingly.

DATED AND DELIVERED ON THIS 3RD DAY OF DECEMBER, 2021

EDWARD M. MURIITHI

JUDGE