



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**ADOPTION CAUSE NO. E004 OF 2021**

**IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011**

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF SIM ALIAS SIM(CHILD)**

**BY**

**LMWK**

**(APPLICANT)**

**JUDGMENT**

1. The Applicant LMWK was previously married under customary law but has since separated and remained single since then. She has one biological child aged six (6) years and wishes to adopt the female minor known as SIM through originating summons dated 17<sup>th</sup> December 2020.
2. From the pleadings, the court gathers that the Applicant LMWK is a real estate manager for her family's properties. She resides in Karen area, within Nairobi County and professes the Christian faith.
3. Records before the court indicate that the minor in this matter was presumably born on 24<sup>th</sup> April, 2006. She was abandoned at [Particulars Withheld] Village in front of the Applicants ailing grandmother's homestead where she was rescued by the Applicant and her mother Mrs. ENK. The matter was reported to Gatundu Police Station and the Applicant was requested to care for the child. In 2011, Gatundu police station booked the matter as OB No. xxxx.
4. On 23<sup>rd</sup> February 2012 Gatundu police station issued a final letter in which they confirmed that the biological parents of the child could not be traced nor did anyone come forward to claim the child. The child remained in the care and protection of the Applicant.
5. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report dated 31<sup>st</sup> January 2019 declaring the child free for adoption. The guardian ad litem LNN filed a report dated 21<sup>st</sup> June 2021, which was favorable and recommended the adoption of the minor by the Applicant.
6. An officer from the office of the Director of children's Services conducted home visits and established that the Applicant is financially and emotionally capable of providing for the upkeep and education of the minor. M/s Nyaranga filed a report dated 12<sup>th</sup> July 2021 recommending the adoption for reasons that the child stands to benefit from the opportunities provided by becoming a child of the Applicant. That she will gain a family and grow up in a stable home. The applicant was found to have fulfilled the statutory requirements for adoption.
7. This is a local adoption and from the record the Applicant has fulfilled all the legal requirements relating to the adoption of the child. 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 their consent. The minor who is now 15 years old filed a consent dated 30<sup>th</sup> June 2021, referring to the Applicant as her mother and accepting to be adopted by her.
8. I also note that the Applicant was born in 1981 and is 40 years old. She is within the age limit eligible to adopt being an adult having attained the age of twenty-five years and is at least 21 years older than the child but has not attained the age of sixty-five years as provided by Section 158(1) of the Children's Act No. 8 of 2011. It is noteworthy that the Applicant has had uninterrupted care and custody of the child for 15 years and is the only parent the child knows.
9. Article 53(2) of the Constitution, provides the overarching principle which must apply whenever any decision concerning a child is to be considered. It provides that:

**“A child’s best interests are of paramount importance in every matter concerning the child.”**

This constitutional and internationally applicable principle is embedded and amplified in section 4(3) of the Children’s Act No.8 of 2001. Consequently, my considered view is that it is in the best interest of the child to be adopted by the Applicant. Reasons wherefore, I allow the prayers sought in the originating summons dated 17<sup>th</sup> December 2020 and order as follows:

- i. The Applicant LMWK be and is hereby allowed to adopt SIM who shall henceforth be known as SMI (minor).
- ii. Her date of birth is 24<sup>th</sup> April 2006 and she is presumed to have been born in Kenya in accordance with article 14(4) of the Constitution of Kenya and her place of birth shall be Gatundu.
- iii. PKK and PMK are hereby appointed as legal guardians in the event that the Applicant dies, or is incapacitated by ill health.
- iv. The Registrar General is directed to enter this order in the Adopted children’s 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.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 2<sup>ND</sup> DAY OF DECEMBER, 2021**

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**L.A. ACHODE**

**HIGH COURT JUDGE**