



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. 52 OF 2017**

**IN THE MATTER OF BABY SN**

**TWM.....APPLICANT**

**RULING**

1. Before me is an Originating Summons dated 6<sup>th</sup> April 2017 brought by TWM for the adoption of SN, a minor (*child*).
2. The Originating Summons was filed under Section 154, 156, 158, 159(1), 159(4) and 160 of the Children Act 2001, and the prayers are as follows –
  1. (*spent*)
  2. (*spent*)
  3. ***That the applicant be authorized to legally adopt BABY SN (herein referred to for all common interest and purposes as the minor) who will be known as SN.***
  4. ***That the infant herein be presumed to be a Kenyan citizen.***
  5. ***That AMM be appointed legal guardian to the minor.***
  6. ***That the Registrar General do make the appropriate entry of BABY SN the minor herein in the Adopted Children’s Register.***
  7. ***That the Director of Immigration do issue the minor with a Kenyan passport.***

3. The Originating Summons was filed with a STATEMENT of the applicant dated 6<sup>th</sup> April 2017 in which it was averred that the applicant was born in Muranga Kenya in 1962, that the minor BABY SN was born on 10<sup>th</sup> April 2004 to a sister of the applicant and PKN both of whom were now deceased, that the applicant was now a [particulars withheld] working in the United States of America with two daughters and one son of her own, and that she had adequate resources to cater for the minor and her own children, and that the applicant was devoted to make the minor herein achieve his goals and change his life.

4. The Originating Summons was also filed with an affidavit sworn by the applicant annexing several documents explaining the circumstances leading to the application and the relationship between the applicant and the minor.

5. This court on 27<sup>th</sup> July 2017 appointed JM as the guardian ad litem, and ordered the Director of Children Services to file their report on the suitability of the applicant to adopt the minor.

6. The guardian ad litem JM and the Director of Children Services filed their respective reports dated 11<sup>th</sup> October 2017 and 24<sup>th</sup> February 2020 respectively, and both reports recommended that the proposed adoption of the minor was in his best interests.

7. This is an application for the adoption of a male child by a single female applicant, as the applicant is a single mother who does not intend to marry. In this regard, Section 158(2)(b) of the Children Act provides as follows –

***“158(2) An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order –***

(a) ....

**(b) a sole female applicant in respect of a male child.”**

8. Having considered the facts and circumstances disclosed to me in this matter, I note that this is a proposed adoption of a minor male child by a sister of the biological mother of the minor. Both the biological mother and father of the child are now deceased, and the main driving motive of the applicant in adopting the minor is to formally provide for the proper upbringing and education of this orphaned child. I note that the minor is now living with a sister of the applicant in Nairobi and that the applicant wants the minor to hereafter proceed to the United States of America after the adoption.

9. In the circumstances of this case as explained in paragraph (8) above, I am satisfied that there exist special circumstances in which this court should allow the adoption of the male minor by the single female applicant, since the applicant is a sister of the mother of the child, and has children of her own, and wants to formally care and educate the child, who is her nephew.

10. I thus allow the application for adoption and order as follows –

**1. The applicant be and is hereby authorized to legally adopt BABY SN (*herein referred to for all common interests and purposes as the minor*) who will be known as SN.**

**2. That the minor herein be and is hereby presumed to be a Kenyan citizen.**

**3. That AMM be and is hereby appointed as legal guardian to the minor.**

**4. That the Registrar General do make the appropriate entry for BABY SN the minor herein in the Adopted Children’s Register.**

**5. That the Director of Immigration of Kenya do issue the minor with a Kenyan passport.**

**Dated and delivered at Nairobi this 14<sup>th</sup> day of October, 2020.**

**George Dulu**

**JUDGE**

*Delivered virtually due to the COVID-19 pandemic and Kenya Ministry of Health Guidelines.*