



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**ADOPTION CAUSE NO. 11 OF 2018**

**(formerly NAIROBI ADOPTION CAUSE 12 OF 2018)**

**IN THE MATTER OF THE CHILDREN ACT 8 OF 2001**

**AND**

**IN THE MATTER OF BABY KNOWN AS MS aka MW**

**AND**

**NMK.....1<sup>ST</sup> APPLICANT**

**RNM.....2<sup>ND</sup> APPLICANT**

**RULING**

1. The adoption order was sought vide two applications. The first application is brought by way of chamber Summons under section 160(1) of the Children Act No 8 of 2001. It is dated 29<sup>th</sup> January, 2018. The Applicants **NMK** and **RNM** seek the following orders:

**1. THAT JMW of P.O. Box [xxx] Matuu be appointed Guardian ad Litem of BABY M an infant.**

**2. THAT the honorable court do direct the Director of Children's Services to compile the requisite report on the applicants' fitness to adopt the infant under the Children Act.**

2. The Second application is brought by way of originating Summons under Section 154, 156, 157, 158, 159, 160 163, 164 and 170 of the Children Act No 8 of 2001. It is dated 29<sup>th</sup> January, 2018. The Applicants **NMK** and **RNM** seek the following orders:

**1. THAT the Applicants be authorized to adopt BABY M an infant and who is to be known as MMM and that the Registrar General be directed to enter this adoption into the register of adoptions.**

**2. THAT SKK and CNW be appointed Legal Guardians of the child.**

**3. THAT the child be presumed to be born in Kenya.**

3. In the preliminary stage, the first application was allowed by the court.

4. According to the applicant's affidavit filed in court, the applicants are married to each other from 1/11/2016. They are Kenyan citizens as per the identity cards annexed to the application. The child's mother EWN gave legal consent to the child being offered for adoption on 12<sup>th</sup> August 2016

5. According to the applicant's affidavit dated 29<sup>th</sup> January 2018, SK and CN who are the 1<sup>st</sup> applicant's brother and sister in law have consented to be legal guardian of the minor. The applicants maintained that they had never been convicted of a criminal offence and they have attached police clearance to that effect. They averred that they approached Buckner Kenya Adoption Services seeking to adopt a child and were informed that the said minor was free for adoption and after having confirmed that no one claimed the child and after its mother had given up the baby for adoption, they took up the said child for mandatory bonding.

6. SKK and CNW swore an affidavit dated 29<sup>th</sup> January, 2018 to confirm consent to act as Legal Guardians.
7. According to a report filed on 17<sup>th</sup> April, 2018 by Buckner Kenya Adoption Services, the minor was born on 22<sup>nd</sup> April, 2016 to EWN who expressed interest to give the minor for adoption and she signed consent relinquishing her rights over baby MS on 16<sup>th</sup> May, 2016 and on the same day Baby M was admitted to Neema House for care and protection. Baby M was admitted to Neema House Infant Rescue Centre for care and protection on 12<sup>th</sup> August, 2016 through the Childrens Court in Nyeri vide committal P& C 99 of 2016. ENW, the minor's mother signed the legal consent to giving the child up for adoption on 12<sup>th</sup> August, 2016 and the minor stayed in the home until 20<sup>th</sup> January, 2017 where he was placed under the care and protection of the applicants
8. Nobody claimed the child and he was declared free for adoption by the Change Trust Case committee vide certificate number xxxx issued on 10<sup>th</sup> November, 2016.
9. On 31.7.2018 this Court directed the Director of Children Services to conduct investigations as to the suitability of the Applicant to adopt **the minor** and submit a report and findings to Court.
10. Francis Kariuki is the Sub-County Children's Officer, Masinga. He conducted a Social Inquiry on the Applicant by visiting the applicants at their home on 27<sup>th</sup> September, 2018. It was observed that the applicants were blessed with a baby boy who passed on and thus the couple have no child of their own and seek to adopt the minor. The minor seemed to have bonded well with the applicants and he opined that the applicants are well suited to adopt the minor herein.
11. The Sub-County Children's Officer, Machakos County filed a favourable report dated 22.10.2018 as to the suitability of the Applicants to adopt the minor. The said officer appeared before me on 24.4.2019 to have the report dated 22.10.2018 adopted in respect of a home visit that was undertaken on 27.9.2018 confirming the suitability of the applicants in Adoption Cause 9 of 2018 to be adopted in the instant proceedings.
12. On 8.11.2018, Mary Kamiri from Buckner Kenya Adoption Services appeared in court to recommend the applicants' application and to confirm the suitability of the applicants to adopt the minor as well as adopt the report dated 17.4.2018. **JMW, CNW and SKK** appeared before me to confirm and rely on the contents of their affidavits and willingness to take up their duties as well as recommend the applicants to adopt the minor. The applicants also appeared before me on the same day and relied on their affidavits to support the application and indicated willingness to adopt and cater for the needs of the minor.
13. This court is satisfied that the Applicants are suitable persons to adopt the minor and that they are financially stable and have the means to provide and care for him. I also find that it is in the best interests of the child to allow the application for adoption.

For the above reasons, the Court orders as follows;

- 1. THAT the Applicants be and are hereby authorized to adopt BABY M an infant and who is to be known as MM M.**
- 2. THAT SKK and CNW be and are hereby appointed Legal Guardians of the minor.**
- 3. THAT the Registrar-General do make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.**
- 4. THAT** the Guardian ad Litem is hereby discharged.

Orders accordingly.

**Dated and delivered at Machakos this 18<sup>th</sup> day of July, 2019.**

**D.K.KEMEI**

**JUDGE**