



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 24 OF 2018**

**IN THE MATTER OF THE CHILDREN'S ACT 2001**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY G K W AND L G K**

**AND**

**IN THE MATTER OF ADOPTION OF BABY M F (MINOR)**

**JUDGMENT**

1. The application herein was brought by way of Originating Summons dated 28<sup>th</sup> February 2018. The same is filed under Sections 158,159,160,163,164 and 169 of the Children's Act and sections 1A, 1B and 3A of the civil procedure Act. The summons is supported by the *statement* and *verifying affidavit* of the applicant together with a bundle of materials filed on 6<sup>th</sup> March 2018. There is also an *original* report filed by the *adoption agency* on 26<sup>th</sup> July 2018; and a further report by the *Guardian ad Litem* filed on 25<sup>th</sup> July 2018.

2. The Applicants G K W and L G K are both Kenyan citizens who got married under kikuyu customary law in the year 2012 but later solemnized the same on 21<sup>st</sup> July 2012 at the Registrar of marriages office Nairobi. The 1<sup>st</sup> applicant is a businessman dealing with gas and water supply whereas the second applicant is working as a sales manager with [Particulars Withheld] Ltd. However, the couple has not been blessed with a child of their own due to medical complications hence the need to adopt a baby to start a family complete with a baby whom they can refer to as their own.

3. The minor is a girl now aged about two years or thereabout. Her date of birth is given as 11<sup>th</sup> October 2016. The baby was born at Nairobi Women's Hospital and named RWN. The biological mother gave up the child for adoption for various reasons including, financial constraints and that the child had been conceived out of a rape ordeal and would therefore bring her painful memories if she stayed with her. The child was then admitted to New Life Home Trust-Kilimani on 12<sup>th</sup> October 2016 and committed to the care and custody of the home vide Protection and Care case No. [particulars withheld] on 15<sup>th</sup> February 2017.

4. The biological mother gave consent of the adoption of the child to Change Trust after signing the Certificate of Acknowledgement on 12<sup>th</sup> October 2016. The minor was declared free for adoption by Change Trust on 27<sup>th</sup> April 2017 vide certificate number [Particulars Withheld]. The joint applicants then approached New life Home Trust-Kilimani in Nairobi with the intention of adopting a child. The home identified the child herein and matched her with the joint applicants. They then received the said minor into their possession on 15<sup>th</sup> September 2017 and the minor has continuously been in their care and custody to date pursuant to section 157(1) of the Children Act.

5. On 13<sup>th</sup> June 2018, the High Court at Nairobi appointed Jedidah Njoki Muigai as the Guardian ad Litem to the said minor. The Guardian ad litem visited the minor at the joint applicants' home and observed that the said minor seemed to have settled well with the family and is happy and quite comfortable interacting with the joint applicants.

6. During the hearing, the applicants confirmed that they had understood the finality and legal implications of an adoption order. They have lived with the minor for nearly one year since placement. They both have reliable sources of income and therefore financially stable. The 1<sup>st</sup> applicant is a self employed business man and the lady is a manager at a retail shop. They both live in their own house within Embakasi and are able to provide for the baby's both financial and emotional needs. The baby is assured of basic provision like food, shelter, clothing, education and medical care and the right to inherit.

7. Section 154 of the Children Act vests the High Court with powers to make adoption orders. The applicants who are Kenyan citizens have demonstrated their capacity to be responsible parents. They are aged above 25 years and below 65 years in compliance with section 158(1) of the Children Act. It is my finding that the applicants are suitable to adopt the baby.

8. Is the adoption in the best interests of the baby? Article 53 (2) of the Constitution underpins the best interests of a child principle as a cardinal consideration before making any decision or order concerning or affecting the affairs of a baby. Similar position is underscored under Section 4 (2) and (3) of the Children's Act. Sub-Section 2 provides-

**“In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.**

9. Considering that the baby has been given out by the mother who conceived her out of a criminal activity (rape), the only viable option in her interest is to find her loving parents and a home to settle. It is therefore in her best interest that the grant of the adoption order to the joint applicants be made to assume all parental rights and duties of the biological parents. They shall treat the adopted child as their own. The adoption order is final and shall be binding during the lifetime of the child and the adopted child shall have the right to inherit the properties of the applicants.

10. In the end, I am satisfied that the legal requirements for a local adoption have been met and therefore grant the following orders-

- a) **That the joint applicants be and are hereby allowed to adopt Baby M F alias R N**
- b) **That the name of the child shall now be TWK;**
- c) **That the effective date of birth shall be 11<sup>th</sup> October 2016 and place of birth Embakasi Nairobi Kenya.**
- d) **That the child is presumed to be a Kenyan Citizen;**
- e) **That the Registrar General is directed to enter this adoption order in the Adoption Register;**
- f) **That MWM shall be the minor's legal guardian in the event that the joint applicants are incapacitated or unable to exercise parental obligations; and**
- g) **That the proceedings and judgment in this cause shall be sealed; and, shall not be accessible to any person without prior orders of the court.**

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1<sup>ST</sup> DAY OF NOVEMBER 2018**

**J.N ONYIEGO**

**JUDGE**