



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**ADOPTION CAUSE NO. E051 OF 2021**

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

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY EW (CHILD)**

**BY**

**JMM AND TM (APPLICANTS)**

**JUDGMENT**

1. The application before Court is an originating summons dated 8<sup>th</sup> March 2021 seeking substantively the adoption of baby EW, by the Applicants JMM and TM. From the record, the Applicants are in a monogamous marriage, which was solemnized at [Particulars withheld] Christian Centre on 10<sup>th</sup> December 1994 as evinced by the Certificate of Marriage serial No.xxxxxx. they have no children of their own and wish to adopt a male child known as baby EW.

2. The pleadings indicate that the 1<sup>st</sup> Applicant JMM is an accountant at [Particulars withheld] and TM, the 2<sup>nd</sup> Applicant is a business woman. They reside at Syokimau within Machakos County.

3. The records before the court indicate that the minor in this mater was born on 16<sup>th</sup> December 2015 as evinced by Birth Notification Serial No xxxxxx. The child was willfully surrendered by her biological mother DAO immediately after birth, who gave her final consent allowing adoption of baby E on 8<sup>th</sup> June 2016

4. Prior to the hearing of the adoption application, Child Welfare Society of Kenya filed a report dated 11<sup>th</sup> November 2020 and issued a certificate serial No. xxx declaring the child free for adoption. The guardian ad litem FMM filed a report dated 6<sup>th</sup> August 2021, which was favorable and recommended the adoption of the minor by the Applicants.

5. 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. He filed a report dated 23<sup>rd</sup> September 2021 recommending the adoption for reasons that the child stands to benefit from the opportunities provided by becoming a child of the Applicants. That he will gain a family and grow up in a stable home. The Applicants were found to have fulfilled the statutory requirements for adoption.

6. 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 the Children’s Act No.8 of 2001,

particularly at section 4(3) of the Act.

7. This is also a local adoption and after a careful assessment of the reports filed herein, I am convinced that the Applicants have fulfilled all the legal requirements relating to the adoption of the minor. The 1<sup>st</sup> Applicant, JMM was born on 13<sup>th</sup> June 1967 and is aged 54 years while TM, 2<sup>nd</sup> Applicant, was born on 10<sup>th</sup> November 1968 and is 53 years old. They are therefore within the age bracket eligible to adopt, being an adult having attained the age of twenty-five years and are at least 21 years older than the child but have not attained the age of sixty-five years as provided by Section 158(1) of the Children's Act No. 8 of 2011. The Applicants also meets the social parameters that are considered relevant to them taking on parental responsibility and custody of the minor in this matter on a permanent basis as would be conferred by the adoption order sought.

8. Reasons wherefore I allow the prayers sought in the originating summons dated 8<sup>th</sup> March 2021 and order as follows;

- i. The Applicants JMM and TM be and are hereby allowed to adopt Baby EW who shall henceforth be known as IMM.
- ii. His date of birth is 16<sup>th</sup> December 2015 and he is presumed to have been born in Kenya in accordance with **article 14(4) of the Constitution of Kenya**.
- iii. SM is hereby appointed as the legal guardian in the event that the Applicants die or are 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 9<sup>TH</sup> DAY OF DECEMBER, 2021**

.....

**L.A. ACHODE**

**HIGH COURT JUDGE**

**In the presence of .....Advocate for the Applicant**



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