



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI (FAMILY DIVISION)**

**ADOPTION CAUSE NO. 47 OF 2018**

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY S**

**LWK.....APPLICANT**

**JUDGMENT**

LWK, hereinafter “the Applicant”, is seeking to adopt BABY S. In the Originating Summons dated 10<sup>th</sup> April 2018, the Applicant seeks the following prayers:

1. THAT the consent of the biological parents of BABY S be and is hereby dispensed with since the infant was abandoned by her biological mother.
2. THAT the Applicant be and is hereby authorized to adopt BABY S and that the child be called SWK henceforth.
3. THAT the Registrar General do make the appropriate entries in the Adopted Children’s Register in respect of BABY SWK.
4. THAT AMK the Applicant’s sister be appointed the Legal Guardian in case of any eventuality or incapacitation affecting the Applicant.
5. THAT the court does issue such other orders as may be necessary in the best interest of the child.

The Applicant has filed a Statement in support of the Application for Adoption in which she states that she is a Kenyan citizen of African descent and that she was born in 1973 (she has attached a copy of her identity card No. [...]). She states that she is single out of choice; that she works as an accountant with [Particulars withheld] with sufficient finances to enable her take good care of the child. She states that she lives in Nairobi and that she professes Christian faith worshipping at [Particulars withheld] in Nairobi West. She further states that she has continuously fostered BABY S since 1<sup>st</sup> July 2014 and that she is mentally fit to take care of the child. She further states that her sister Ms AMK has consented to be the child’s legal guardian.

The Applicant has also filed an Affidavit in support of the Originating Summons on which she has attached a copy of a report from KKPI Adoption Society dated 21<sup>st</sup> July 2014 declaring BABY S free for adoption; a copy of a Certificate to Declare the child free for adoption; a copy of Admittance Form dated 8<sup>th</sup> August 2013 admitting the baby to Happy Life Children’s Home in Nairobi; a copy of a letter by the Police from the Officer in Charge of Kenyatta Police Post, dated 8<sup>th</sup> August 2013; a copy of court order issued by the Children’s Court and dated 26<sup>th</sup> August 2013 committing the baby to the Children’s Home; a copy of medical particulars of the baby dated 2<sup>nd</sup> August 2012; copy of Foster Care Agreement duly executed by the Applicant dated 1<sup>st</sup> July 2014 and copies of bank statements for the Applicant, photographs and Applicant’s certificate of good conduct.

From the pleadings and the attached documents, it is clear to this court that BABY S is a female born on 13<sup>th</sup> May 2013 at the Kenyatta National Hospital. She was abandoned in that hospital by her mother on 3<sup>rd</sup> June 2013. The matter was reported at the Kenyatta Police Post and recorded on OB No [...]. The information on an abandoned baby was relayed to Kasarani District Children Office who sought to have the baby placed at HappyLife Children’s Home for care and protection awaiting committal by the Court. This was done through the order of the Children’s Court dated 26<sup>th</sup> August 2013 in Protection and Care Case No. [...] for a period of 3 years. On 6<sup>th</sup> March 2014 Kenyatta Police Post confirmed that nobody had claimed the child since her abandonment and that the search for her parents had been fruitless. The baby stayed in the Home until 1<sup>st</sup> July 2014 when she was placed under the care and protection of the Applicant.

KKPI conducted an interview during Home Visit of the Applicant and filed a report signed by Nyawira Kangari, the Director, and Whitney Msingo, a Social Worker. I have read the report. It is a positive report and recommends that the Applicants adopts the baby.

On 18<sup>th</sup> October 2018, RRNG was appointed *Guardian Ad Litem* of BABY S. I have read a report prepared by R dated 28<sup>th</sup> May 2019 as directed by the court. It shows that the baby was fully settled in and was well taken care of by the Applicant. She noted in her report that the child has been living with the Applicant for the last five years and had started attending school at [Particulars withheld] Primary School. R

recommends that the Applicant be allowed to adopt the child.

The Department of Children's Services Nairobi County in the Ministry of Labour and Social Protection, State Department of Social Protection has prepared a report through Ezekiel Kimani, a Children's Officer, dated 5<sup>th</sup> November 2020. In this report it is recommended that the Applicant be allowed to adopt the child because it is in the best interest of the child.

I have considered the pleadings in this matter and all the attached documents. BABY S has been declared free for adoption. She had been abandoned by her mother and efforts by the police to track down her mother or any of her relatives bore no fruits. It was not therefore possible to obtain the necessary consents. The Applicant has been fostering the child and they seem to have bonded very well. All the reports on her interactions with the child are positive and recommend that she be allowed to adopt the baby. She is over 25 years older than the child and her documents show that she is well off financially to take care of the baby. She has a secure job and a home where she has been living with the child. It is my finding therefore that all the requirements of the law under the provisions of the Children's Act, particularly under Part XII of that Act, have been complied with. It is my considered view that given the documents attached to the pleadings in this matter, it is in the best interests of BABY S to allow this Originating Summons which I hereby do. I grant an adoption order and issue the following order:

1. THAT the consent of the biological parents of BABY S be and is hereby dispensed with.
2. THAT LWK be and is hereby authorized to adopt BABY S.
3. THAT BABY S shall henceforth be called SWK.
4. THAT the Registrar General do make the appropriate entries in the Adopted Children's Register in respect of SWK.
5. THAT AMK is hereby appointed the Legal Guardian of Baby SWK.
6. THAT RRNG is hereby discharged from being Guardian Ad Litem of BABY S.

Orders shall issue accordingly.

This court wishes LWK and SWK happiness together and good health in their new journey of mother and daughter. May she grow to be all that is good in life.

**Dated, signed and delivered this 8<sup>th</sup> April 2021.**

**S. N. MUTUKU**

**JUDGE**