



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

ADOPTION CAUSE NO. E 103 OF 2021

IN THE MATTER OF THE CHILDREN'S ACT 2001

IN THE MATTER OF ABANDONED BABY GIRL ALIAS AELIAS

ABANDONED FEMALE AFRICAN CHILD (THE CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY MWM AND MW (THE APPLICANTS)

JUDGMENT

1. The Applicants MWM and MW in a monogamous marriage which was solemnized at the Registrar's office in Nairobi on 1st July 2014. The couple has no biological child. They wish to adopt a female child known as Baby girl alias A through Originating summons dated 16th August 2021.
2. From the pleadings, it is evident that both Applicants are well able to provide for an extra member of the family. The female applicant is a business woman while the male applicant is in ICT and is currently employed by the [particulars withheld] Society. The applicants have a plot in Thamanda where they currently reside and they both profess the Christian faith.
3. The record before the court indicates that the child in this matter was presumably born on 2nd May 2020 at Chepsir Sub-location in Kapseger location. The baby was found by one BK abandoned at the Ministry of Repentance Church Chepsir area on 16th May 2020. The matter was later reported at Chepseon Police Station and was booked vide the OB No. xx/xx/x/2020. The child was later referred to Kericho County Referral Hospital for medical examination on the same day.
4. On 20nd May 2020, the child was committed to Africa Gospel Church Baby Centre- Nakuru as a child in need of care and protection, by the Kericho Children's Court under case number 34 of 2020. On 19th March 2021, the Chepseon police station issued a final letter in which they confirmed that the biological parents of the child could not be traced and neither did anyone come forward to claim the child.
5. On 12th April 2021, BK, the good Samaritan who found the child was contacted to give the current status of the child and he reported not having seen or heard anyone claim the abandoned baby.
6. Prior to the hearing of the adoption application, Kenya Children's Homes prepared and filed a report dated 21st April 2021 declaring the child free for adoption. The guardian ad litem JNM filed a report dated 19th November 2021, which was favorable and recommended the adoption of the minor by the Applicants.
7. An officer from the office of the Director of Children Services conducted home visits and established that the Applicants are financially and emotionally capable of providing for the upkeep and education of the minor. A report dated 25th October 2021 was filed recommending the adoption for reasons that the child stands to benefit from the opportunities provided by becoming a child of the Applicant. 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.
8. This is a local adoption and from the record the Applicants have fulfilled all the legal requirements relating to the adoption of the minor. MW was born on 28th June 1977 and is aged 45 years while MWM born on 14th January 1982 is aged 40 years. They are therefore within the age bracket eligible to adopt, being adults 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 meet the social parameters that are considered relevant for them to take on parental responsibility and custody of the minor in this matter on a permanent basis as would be conferred by the adoption order sought.

9. The consent of the biological parents was dispensed with since the child was abandoned at infancy and the parents could not be traced to give their consent.

10. Mr. SMand his wife AK, a brother and sister in law to MWM (the female applicant) by a sworn affidavit dated 16th August 2021, consented to be appointed legal guardian in the event that the applicants are incapacitated and cannot care for the child.

11. 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 section 4(3) of the Children’s Act No.8 of 2001. Consequently, my considered view is that it is in the best interest of the child to be adopted by the Applicant. Reasons wherefore, I allow the prayers sought in the originating summons dated 16th day of August 2021 and order as follows: -

- i. The Applicants MWM and MWbe and are hereby allowed to adopt Abandoned Baby Girl alias AEwho shall henceforth be known as MWM.
- ii. Her date of birth is 2nd May 2020 and she is presumed to have been born in Kenya in accordance with Article 14(4) of the Constitution of Kenya. Her place of birth shall be Nairobi.
- iii. SMM and AWK are hereby appointed as legal guardians 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 guardian ad litem be and is hereby discharged.

It is so ordered.

SIGNED DATED and **DELIVERED** in court this 27th day of January, 2022

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L.A ACHODE