



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

ADOPTION CAUSE NO. 4 OF 2019

IN THE MATTER OF ADOPTION OF BABY AA

MKK & RNM.....APPLICANTS

JUDGEMENT

Brief facts

1. The applicants in their Originating Summons dated 12th September 2019 under **Section 160 of the Children Act** and **Section 24 of the Interpretation and General Provisions Act** seeks for orders of adoption of A.A and that its name be changed to PWK. The applicants further seek that this court directs the Registrar General to make an entry in the Adoption of Children Register.

The Applicants' Case

2. It is deponed that Baby AA was found abandoned on 11th June 2016 at Kitengela by a good Samaritan who made a report of the abandonment and rescue of the child at Kitengela police base which was recorded in the occurrence book as OB No. xx/xx/6/2016. The Kajiado North Sub County Children Office was notified of the incident and they secured admission for the child at Mahali Pa Maisha Children's Home where the child was admitted for care and protection.

3. On 21st July 2016, the Kajiado North sub county Children's Office vide Protection & Care Case No. 18 of 2016 applied successfully, to the children's court Kajiado for committal of the child to the custody of Mahali Pa Maisha Children's Home.

4. The applicants aver that Kitengela Police Station confirmed that their efforts to trace the biological parents of the child had not materialised and that no person or relative has come to claim the child since she was rescued in 2016.

5. The applicants state that they are husband and wife and they have been married under customary law since 2005 and later celebrated their marriage in church on 9th February 2012. Both applicants state that they earn a living from business enterprises they run in Nyeri town. It is further stated that the couple have had care and control of the child for more than three statutory months up to 2019 as required by the law. Furthermore, it is stated that the applicants are in good physical health and emotionally fit to be parents of the child. Additionally, it is stated that the applicants are financially stable with fair income from their businesses and as such will be able to provide fully for the child's needs.

6. The applicants further state that the child was declared free for adoption and that Mahali Pa Maisha Children's Home supports their application to adopt the child. It is further proposed the 1st applicant's sister AWK be appointed the legal guardian of the child in the event of death or incapacity of the applicants before the child is of full age. JWK was earlier in these proceedings appointed guardian ad litem.

Issues for determination

7. The main issue for determination is whether the applicants have satisfied the legal requirements under the Children's Act to be granted the adoption order.

The Law

8. The preliminary requirements for the making of an adoption order are set out in **Section 156(1) of the Children's Act** which provides as follows:-

No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free or adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.

9. Thus for an adoption order to issue the following ought to be taken into consideration:-

- a) A child must be at least six (6) weeks old and declared free for adoption;
- b) The child concerned must have been in the continuous care and control of the applicant within Kenya for a period at least of three (3) consecutive months preceding the filing of the application; and
- c) Both the child and the applicant have been evaluated and assessed by a registered adoption society in Kenya.

10. In the instant cause, the minor was found abandoned a fact confirmed by the officer commanding station (OCS) Kitengela vide a letter dated 14th June 2016 and was recorded as OB No. xx/xx/6/016. Through a letter by Sub-County Children's Officer, Kajiado North Sub County, another letter by the O.C.S Kitengela to Mahali Pa Maisha Children's Home as well as the Certificate to Declare a Child Free for Adoption Serial number xxxxx, a report to declare the child free for adoption dated 31st January 2017 by Change Trust Society and a report by the children's officer dated 26th November 2020, the abandonment of Baby AA is hereby reiterated and confirmed. Evidently, neither the police nor the institution to whom the committal for care and protection were given, have received any inquiry about the child from its parents or other relative. As such, legal abandonment may be presumed pursuant to **Section 159(1)(a)(i) of the Children Act** which provides:-

Abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months.

11. It has been confirmed that the minor was found abandoned and as such, the provision of consent is hereby dispensed with as required under **Section 158(4)(a-f) of the Children Act**.

12. Notably, the Department of Children's Services in Nyeri made a social enquiry report and in its report dated 26/11/2020 recommended the applicants for the adoption of the child.

13. The guardian ad litem has deponed that the applicants whom she knows well have the capacity to adopt the baby. The mandatory reports by the Children's Department and the Adoption Society have recommended adoption by the applicants of Baby AA. It is demonstrated that the applicants have stayed with the child for more than three months and taken good care of her, that they have the financial capacity, that their home environment is safe, secure and satisfactory; that the child is relating well with the applicants and that the applicants have not received or agreed to receive any reward in consideration for the adoption.

14. As such, the applicants have complied with all the requirements of the law for purposes of adoption and that it is in the best interests of the child that the applicants be authorised to adopt the child. The applicants have been informed that the order of adoption is final and that the child once adopted has all the rights enjoyed by a biological child including inheritance.

15. The court in allowing the Originating Summons dated 12/09/2019 makes the following orders:-

- a) That the applicants do adopt Baby AA and change her name to PWK.
- b) That AWK is hereby appointed the legal guardian of Baby PWK.
- c) That the child upon adoption becomes a Kenyan citizen with all the rights provided for under the law.
- d) That an entry be made of these orders in the Adoption Register.

16. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 31ST DAY OF MARCH, 2022.

F. MUCHEMI

JUDGE

Ruling delivered through videolink this 31st day of March, 2022