



REPUBLIC OF KENYA



**In re BW (Infant) (Adoption Cause 15 of 2018)
[2022] KEHC 10404 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 10404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
ADOPTION CAUSE 15 OF 2018
RB NGETICH, J
MAY 31, 2022
IN THE MATTER OF THE CHILDREN'S ACT 2001
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BW (INFANT)
BY
GNM AND LMM –JOINT APPLICANTS**

RULING

1. The joint applicants herein filed an originating summons date August 9, 2018, seeking the following orders: -
 - a. That the consent of the biological parents of BW be dispensed with since the child was abandoned shortly after birth.
 - b. That the applicants herein be and are hereby authorized to adopt BW and the child shall be called BWN.
 - c. That this court be pleased to appoint PKM & PKK as the legal guardian of BW upon granting of the adoption order.
 - d. That the Registrar General be ordered to make the appropriate entries in the Adopted Children's Register in respect of BW.
 - e. That BW be considered a Kenyan citizen.
2. The application is supported by the statement in support sworn by the applicants jointly. The applicants are Kenyan citizens born in 1966 and 1965 respectively and married in the year 1991 through a customary marriage. They have no issues in the marriage, which necessitated the desire to adopt the child.



3. The applicants averred that they are both employed as civil servants, having a stable income and with the necessary finances to cater for the minor.
4. The minor was born on July 1, 2015, at Dagoretti Market. On July 29, 2016 Little Angels Network vide certificate serial number xxxx declared the minor free for adoption in Kenya and was subsequently placed under the care and custody of the applicants on September 21, 2017.
5. On May 27, 2019 the court appointed RNM as the guardian Ad Litem and the County Director of Children's service were directed to investigate and compile a report on the Applicants fitness to adopt the minor.
6. The guardian *Ad litem* filed her report on December 11, 2019 recommending the applicants fit to adopt the minor. From the report, the minor related well with the applicants and their relatives as the applicants had shown their commitment to bring up the child willingly without coercion.
7. The County Director of Children's service filed a report on June 19, 2020. The report describes the 2nd applicant as a reserved person who does not like being with the minor and thus there is no much bonding between the minor and the 2nd applicant, while the 1st applicant relates well with the minor. It was also noted the minor was very free to the 1st applicant than the 2nd applicant.
8. Based on the findings of the County Director of Children's report the court through a ruling delivered on May 7, 2021, the court granted the applicants a period of 6 months to resolve their differences on the adoption process. The applicants were directed to seek professional counseling through Little Angels Network.
9. The applicants did attend counseling and a report was filed on September 21, 2021, indicating the applicants had not shown any psychological strife's in regards to the child or marriage. They had bonded well with the child and they had the best interest of the child at heart.
10. A second report by the children's department was filed on May 5, 2022. It expressly recommended the applicants to adopt the minor.
11. During the hearing the 1st applicant urged the court to allow them adopt the child. He said he has been married to the 2nd applicant for 31 years and the child has been in their care and custody since 2017 and is currently in grade 2. He said he would like the child to be called BWN. He said they have gone through counselling as recommended and they have no issues.
12. The 2nd applicant corroborated the evidence of the 1st applicant. She confirmed that they have no issues in their marriage and she is willing to adopt the minor.
13. The guardian RN stated that she knows her role as a guardian to the child. The minor appeared happy and well taken care of by the applicants.
14. I have considered the application, materials in support and the evidence of the parties. I am called upon to determine two issues;
 - a. Whether the applicants are fit to adopt the child
 - b. Whether the adoption is in the best interest of the child.
15. Record show that the child herein was discovered by a good Samaritan On July 1, 2015 abandoned at Dagoretti Open air market. The Good Samaritan took the child and reported the matter at Dagoretti Police Post vide O.B. No. 23.1.01.2015. The police allowed the good Samaritan to continue taking



care of the child. In September 2015, the child was placed at Frances Jones Dagoretti Children Center. Efforts to trace her parents were futile and no one claimed her as well.

16. On July 29, 2017 the minor was declared free for adoption and placed under the care and custody of the applicants. The child having been found in Dagoretti within the Republic of Kenya, it is assumed that she is a Kenyan citizen. The child is above 6 weeks and below 18 years, which period falls within the age bracket of an adoption pursuant to section 156 of the *Children Act*.
17. The applicants are Kenyan citizens aged 56 and 55 years respectively, thus within the age bracket to qualify to adopt a child as per Section 158 of the *Children Act*. They both earn a monthly income of over Kshs. 100,000/= as they are in formal employment.
18. Section 4(2) and (3) b of the *Children Act* provides for the best interest of the child before any decision concerning the child. The child is in need of parental love, guidance and care. They understand the responsibilities of adopting the child and they have created a very strong bond with the child. I have no doubt they have the necessary requirement to adopt the child. The child will grow in love and get the basic needs she requires. It is in the best interest of the child that the child be adopted by the applicants.
19. Final Orders:
 1. The applicants are hereby allowed to adopt Baby BW.
 2. RN is hereby appointed legal guardian of the minor in the event of any eventuality befalling the applicants.
 3. The child to be called BWN.
 4. The Registrar General is directed to enter the names of the child in the adoption order in the adopted children's register.
 5. The guardian ad litem is discharged.

RULING DELIVERED, DATED AND SIGNED VIA ZOOM AT KIAMBU THIS 31ST DAY OF MAY, 2022

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RACHEL NGETICH
JUDGE

**In the presence of:

Kinyua - Court Clerk

1st Applicant - Present

