



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
ADOPTION CAUSE NO. 5 OF 2019
IN THE MATTER OF THE CHILDREN ACT (Act No. 8 of 2001)

AND

IN THE MATTER OF EH, MINOR

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

PGK.....1ST APPLICANT

LKM.....2ND APPLICANT

J U D G M E N T

Background

1. This is a straight forward adoption matter where all requisite documents were availed in a timeous and apt manner. For that counsel, Ms Kimenyi, is commended.
2. The applicants are husband and wife, married in church on 10th December, 2011. In their statement in support of their application to adopt they say they have long desired to parent a child. Unfortunately, they have been unable to sire one due to infertility arising from Primary Amenorrhea which caused the ovaries to stop functioning normally. They therefore wish to adopt a child. Both applicants work at [Particulars Withheld] as a Pharmacist and Patient Attendant respectively.
3. They made inquiries and filled an Inquiry Form as Prospective Adopters with Buckner Kenya Adoption Services on 4th December, 2017, giving all their personal, medical and other details including referees. The organization is a duly registered adoption society. Copies of all relevant details afforded to Buckner Kenya Adoption Services were exhibited in the application.
4. Their desire to adopt a child they could love and cherish, led them to inquire at childrens' homes. They found Baby E, aged 9 months, at Hope House Babies Home, Nairobi, and entered into an agreement on 5th October, 2018 to foster the baby. They were notified of the legal and other implications and consequences of breach in compliance with conditions imposed by the Home. They understood that the Foster Parent Agreement did not grant them legal custody over the child. They duly complied with Part XI of the Children Act. Copies of the Foster Agreement and process were exhibited in the application.
5. The detailed background concerning Baby EH is also exhibited in the application. Briefly, it is as follows. Baby EH was found abandoned along the road on 5th January, 2018 at 8.00pm in Nairobi. She was wrapped in a cloth. A Good Samaritan took her to Villa Franca Police Station who recorded the incident in OB [....]. The police accompanied the baby to Kenyatta Hospital where she was checked for wellness, admitted on 6th January, 2018 and discharged on 22nd January, 2018. Having no parents, the Children's Department was involved and she, Baby EH, was placed in Hope House Babies Home as a child in need of care and protection.
6. All the background information on Baby EH is detailed in reports, medical notes and extracts and communication exchanged between: the Police, the Kenyatta Hospital, the Children's Department and the Nairobi Children's Court, which committed Baby EH to Hope House Babies Home. The committal was for an initial period of three years by order made on 25th July 2018 in Protection and Care Case No. 416 of 2018. That Home is where the applicants found Baby EH, all efforts by Police and Social Services to trace the parents having proved futile.

7. Having fostered the child from October 2018, and satisfied that they had formed a bond with Baby EH, the applicants on 27th November, 2019 filed the present application to commence the legal adoption process. On 4th December, 2019, the court appointed MMM, a Social Worker, as the Guardian Ad Litem. It also ordered that the Children's Department, Naivasha, do investigate the applicant's fitness to adopt the child or otherwise and file a report.

8. The Guardian Ad Litem filed a detailed a Social Inquiry Report dated 2nd March 2020, in which she makes the following recommendation:

“Observations

It was observed that the applicants have fully committed themselves financially, socially and emotionally to the child the best.

Recommendations

In my due diligence, I fully support that the adoptive parents are capable of providing parental care and love to the minor in this adoption matter. I therefore pray this honourable court, to act in the best interest of the child; i.e. allow PG together with LKM to adopt baby EH to be their child.”

9. The Children's Department also filed a detailed report dated 26th February, 2020 **Ref CCC/[....]** covering: Background information regarding each of the Prospective adoptive parents; Background information on the child; Social background of applicants and social support to adoptive arrangements; reasons advanced for adoption; Financial ability of proposed adoptive parent; Outcome from Home Visit; opinion on whether the child had been duly declared free for adoption and their Social Officers concluding observations and recommendations.

10. I find it apt to highlight the observations and recommendations in the Children's Department Report as follows:

“Observations

- Bonding was observed to have occurred between the child and the applicants. The applicants appear as strong and stable people not daunted by responsibilities that come with parenthood.

- The child is well provided for by the applicants.

- There is wider family support for this proposed adoption.

- Everything being equal, they are devoted to see the child through childhood. But in the event that they are dead or incapacitated, they have proposed a legal guardian MMM for the child in this matter.

- The applicants say they have verbal consent from their parents and siblings and that they are aware of what they are doing in this matter. Contacted on phone the parents and the guardian are fond of the couple and spoke passionately about the process. The child in this matter was abandoned and no trace of her parents hence it will be in the best interests of the child to be adopted.

- The applicants were assessed by Buckner Kenya Adoption Services and a freeing certificate serial number [....] dated 17th September, 2018.

Recommendations

Your Lordship, this is in our opinion a straight forward local adoption where the applicants meet the legal adoption requirements for adoption as per the Children Act, 2001. In addition, the applicants have proved capable of taking on parental responsibility over the child in this matter since she was placed with them on 5th October, 2018.

The child in this matter was abandoned shortly after her birth. The adoption will give her an opportunity to become the daughter of the applicants as opposed to life in an institution where she had been committed. Institutions can only offer temporary relief to the child who must be given more permanent care considering circumstances to fully protect her. An adoption would therefore be in the best interest of the child.

The Director Children Services would therefore recommend that the Honourable Court issue final orders in favour of the proposed adoption. That, joint applicants be allowed to adopt Baby EH Aka PNG, a female child who they propose to name PNG.”

11. A report by Buckner Kenya Adoptive Services on Baby EH dated 13th January, 2020 indicates that the child was presumably born on 31st December, 2017. It declares that:

“The minor was abandoned and has remained unclaimed for more than six months. She was committed to the care of Hope House Babies Home and thereafter placed under the care and control of the applicants who are desirous of adopting her.

Adoption will be in the best of the child. It is in this regard that Buckner Kenya declared her free for adoption under Section 159 (a) (i) of the Children's Act on 17th September, 2018.

12. The Original Certificate of Declaring a Child Free for Adoption No.[...] dated 17th September, 2018 was exhibited and is on the file. It is a pre-requisite for adoption under **Section 156** of the **Children Act**.

13. **Section 157 (1)** of the **Children's Act** has also been complied with as the child has been in the continuous care and control of the applicants' for more than three consecutive months, and both the child and the applicants were evaluated and assessed by a registered adoption society, in this case Buckner Kenya Adoption Services.

14. **Section 158 (1) to (4)** of the **Children Act** have been complied with in that the applicants' have complied with in that the applicants have provided documentation to prove that they are over 25 years and under 65 years old, that the child is not their relative; that they are not either the mother or father of the child; that they are both of sound mind within the meaning of the Mental Health Act; have not been charged or convicted by a court of any offence; and that they are married.

15. This Court notes that the child was abandoned, and in terms of **Section 159** of the **Children Act**, it has duly presumed abandonment at birth with the parents of the child not having been seen or heard from for at least six months.

16. In light of all the foregoing, this Court is satisfied that this is a proper case for issuance of an adoption order in that it will be in the best interest of the child pursuant to **Section 4** of the **Children Act**.

17. Accordingly, the application is allowed and the following orders are hereby issued:

- i) That the Applicants, **PGK** and **LKM**, are hereby allowed to adopt the child currently identified as **Baby EH**.
- ii) That henceforth, the child will be renamed as **PNG**.
- iii) That the child's date of birth is hereby declared to be 31st December, 2017 and her place of birth declared to be Nairobi County.
- iv) That the child is hereby presumed to be a Kenyan Citizen by birth.
- v) That consent of the child's biological parents/guardian is hereby dispensed with.
- vi) That the guardian ad litem is hereby discharged, and DTOK and JFT are appointed as Legal Guardians of the child, in the event that the Applicants herein are incapacitated or in any way unable to discharge their parental obligations.
- vii) That the Registrar General is hereby directed to make the appropriate entries in the Adopted Children's Register.

18. No order is made as to costs.

Administrative directions

19. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Teams tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

20. A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

21. Orders accordingly.

Dated and Delivered in Naivasha by teleconference this 25th Day of January, 2021.

R. Mwongo

R. MWONGO

JUDGE

Attendance list at video/teleconference:

1. Ms Kimenyi for the Applicants
2. Court Assistant - Quinter Ogutu