



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 45 OF 2020

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES

AND

IN THE MATTER OF ADOPTION OF BABY J (MINOR)

MML.....1ST APPLICANT

ESL.....2ND APPLICANT

JUDGMENT

(1) Before this Court is the Originating Summons dated 15th June 2020 seeking the following orders:-

1. **THAT** the Applicants be authorized to adopt BABY J to be known as EJJ.
2. **THAT** JMB and his wife DMM be appointed as the legal guardians of the child in the event of the Applicants' death or incapacity before the child reaches the age of majority and/or self-reliance.
3. **THAT** the Court be pleased to make any further orders it deems necessary.

(2) The Summons was canvassed by way of *viva voce* evidence. The hearing took place via the online platform on 3rd December 2020. The two Applicants MML(1st Applicant) and ESL(2nd Applicant) are a couple who got married to each other on 7th June 2015 in Minnesota, USA. A copy of their Marriage Certificate MEL'9' is annexed to the Summons. The couple has no biological children of their own. The 1st Applicant is of dual citizenship being Kenyan and British whilst the 2nd Applicant is a citizen of the United States but as per her Further Affidavit dated 10th November 2020 the 2nd Applicant is now a Permanent Resident of Kenya vide the annexed Certificate of Permanent Residence Serial No.xxxxxxx. The couple resides in Nairobi, Kenya and both work for gain in the Republic of Kenya. They both profess the Jewish faith.

(3) The child in question being a boy-child is believed to have been born on or about 25th February 2019. He was found abandoned within Narok Township by a Good Samaritan who rescued the child and reported the matter to Narok Police Station vide OB No. 7 of 9th March 2019. Thereafter the child was released to the NEST Children's Home for care and control. The child was eventually committed to the said Children's Home vide the Protection and Care Case Number 29 of 2019. The child was then matched with the Applicants and was placed in their care as Foster Parents on 28th January 2019, pending adoption.

(4) PW3 LA was approved and appointed as guardian ad litem in this matter on 8th October 2020. The guardian ad litem prepared and filed in Court her Report recommending the Adoption.

(5) PW4 GE is from the KKPI Adoption Society a Registered Adoption Agency. She confirms that the said Adoption Society issued a Certificate Serial Number 669 dated 15th November 2019 declaring the child free for Adoption.

(6) PW5 EK is a Children's Officer attached to the Children's Department. He prepared and filed in Court the Report dated 23rd October 2020, also recommending the Adoption.

ANALYSIS AND DETERMINATION

(7) 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:-

“159(1) 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 for adoption by a Registered Adoption Society in accordance with the rules prescribed in that behalf.”

(8) The child in question is estimated to have been born on or about **25th February 2019**. Therefore he is now about one and a half (1^{1/2}) years old well over the six (6) week limit required by law. The child was declared free for adoption on **15th November 2019** by **KKPI** a Registered Adoption Agency vide the Certificate **No. 669** (Annexed to the Originating Summons dated **15th June 2020**).

(9) The Court is required to assess the suitability of the Applicants to adopt this child. The Applicants are a couple who have been in a legal marriage for the past five (5) years and are committed to one another. The couple has no biological children of their own hence the desire to adopt. The Applicants expressed to the Court their desire to give the child a stable and loving home. They both confirmed that they comprehend and accept all the rights and obligations arising from an order of Adoption including the right to inherit. The extended family of both Applicants are said to have welcomed their intention to adopt the child. Indeed the couple has appointed as legal guardians for the child **Jeremy and Devon Bulman** who are the 2nd Applicant's brother and his wife. The two have signed consents accepting the said appointment and obligation.

(10) The Applicants are both permanently residents in Kenya. Although the 2nd Applicant is an American Citizen, there is evidence that she is now a Permanent Resident in Kenya and holds a Certificate of Permanent Residence dated **22nd October 2020**. This Court is fully aware of the fact that in the year **2014** a moratorium was placed on International Adoptions from Kenya. However I find that this moratorium would not extend to the 2nd applicant who is an American citizen because she now holds a Certificate of Permanent Residency in Kenya. Further the fact that the 2nd Applicant has invested in a business in Kenya persuades me that she fully intends to make Kenya her permanent home. The Applicants are both degree - holders and are gainfully employed. The 1st Applicant is the **Regional Director** for **Give Directly** a local NGO whilst the 2nd Applicant owns and runs **Acacia Innovation Limited** a local waste management company which has a factory in **Bungoma County**. I am convinced that the Applicants have made their home in Kenya and I see no evidence of an intention to move the child out of this country.

(11) From their employment and businesses the Applicants earn about **Kshs. 1.0 million** per month which is more than sufficient to provide for the needs of the child. The Report of the Children's Officer indicates that a visit was made to the home of the couple at **Delamere Flats** in the **Milimani** area of Nairobi. The home was found to be spacious with a room set aside for the child. They have hired a helper to assist in caring for the child. The Home Environment was found to be conducive for the child's growth and development.

Finally the Applicants were vetted by the Kenya Police and were found to have no criminal antecedents. They have both annexed their Certificates of Good Conduct (Annexure **MEL “11”**) in this regard. All in all I am satisfied that the Applicants are very suitable adoptive parents for this child.

(12) **Section 4(2)** of the **Children Act** provides:-

“In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” [own emphasis]

(13) This is a child who was abandoned at birth or shortly thereafter. Efforts to trace the child's biological parent(s) have borne no fruit. A Final Police Letter dated **14th October 2019** from Narok Police Station (Annexure **MEL ‘3’** to the Originating Summons) indicates that the Police have been unable to trace the parents of the child despite a six (6) months search. In the circumstances I do hereby do away with the need for any consent in line with **Section 159(1) (a)** of the **Children Act**.

(14) **Article 14** of the **Constitution of Kenya, 2010** deals with the question of **Citizenship Article 14(4)** provides as follows:-

“(4) A child found in Kenya who is, or appears to be, less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”

(15) The subject child was found abandoned in Kenya. He is less than eight (8) years old. Accordingly said child is presumed to be a citizen of Kenya by birth.

(16) The child herein has been in the custody of the Applicants since **November 2019**. He has undoubtedly formed an attachment to the Applicants. I was able to observe the child on the online platform. He appeared healthy and happy and was comfortable being cuddled in the arms of the 2nd Applicant. I have no doubt that the child is in a loving and nurturing environment. The Reports from the guardian ad litem, and the **Children's Department** have both recommended this adoption. I have no reason to disagree with said recommendations. This is a child who at best faced an uncertain future in a Children's Home or other similar institution. This adoption offers the child the opportunity to be raised in a loving and stable home environment like other children, I find that this Adoption would certainly serve the best interests of the child.

(17) Accordingly I do allow this Summons and I make the following orders:-

(1) The Applicants MML and ESL are authorized to adopt the child Baby J who will henceforth be known as E.JL.

- (2) Need for consent is dispensed with in line with Section 159(1) as of the Children Act.
- (3) The Registrar General is directed to make the relevant entries in the Adopted Children's Register.
- (4) That JMB and his wife DMMM are appointed as the Legal Guardians of the child.
- (5) No orders on costs.

Dated in Nairobi this 22ND day of January, 2021.

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MAUREEN A. ODERO

JUDGE