



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
ADOPTION CAUSE NO. 7 OF 2019
IN THE MATTER OF THE CHILDREN'S ACT 2001
AND
IN THE MATTER OF AN APPLICATION BY DKM AND CKM FOR AN ORDER OF ADOPTION
IN THE MATTER OF ADOPTION OF BABY O Alias SB
JUDGMENT

1. By Originating Summons dated 4th September, 2019, pursuant to Sections 154, 156, 157, 158, 159, 163 & 170 of the Children's Act, the applicants seek:

- 1. That the consent of the biological parents of Baby O Alias SB be dispensed with since the child was abandoned shortly after birth.**
- 2. That the applicants be authorized to adopt Baby O and the child's name be changed to SB.**
- 3. That the court be pleased to appoint VGM & ZKM as the legal guardians of SB upon granting the adoption order**
- 4. That the Registrar General be ordered to make the appropriate entries in the Adopted Children's Register in respect of baby SB.**
- 5. That SB be considered a Kenyan citizen.**
- 6. That the court be pleased to make any further orders it deems necessary.**

2. The applicants who are Kenyan citizens by birth were born on 01/07/1972 and 25/12/1980 respectively. The 1st applicant is a teacher at [particulars withheld] Boys and the 2nd applicant is a secretary at [particulars withheld] Secondary School. They solemnized their marriage on 10/12/2005 and have no child of their own. They received the baby into their custody on 05/02/2019 and have continuously taken care of him ever since.

3. The baby was reported abandoned by his mother at [particulars withheld] mother and Baby unit at Moi Teaching and Referral Hospital on 06/02/2017. The matter was then reported at Naiberi Police Station and booked vide OB. No.XXXX/2017. The baby was referred to Thomas Barnardo House for care and protection through the sub-county Children office, Eldoret East, as per the placement letter dated 13/03/2017. The baby was subsequently committed to the said Thomas Barnardo House on 14/03/2017 pursuant to the orders issued in **Eldoret, CM's court, Care and Protection Case Number 44 of 2018.**

4. Police at Naiberi Police Station commenced investigations with a view of tracing the baby's family and on 12/10/2017 indicated in their final letter that their efforts to trace them were fruitless. Because nobody came forward to claim the baby from the date he was abandoned, the baby was declared free for adoption by Child Welfare Society of Kenya on 23/01/2019 and a certificate issued. The baby was placed with the applicants on 05/02/2019 for foster care pending adoption as confirmed by the care agreement dated 05/02/2019 and signed by the applicants on the same day. Thereafter, the Child welfare Society of Kenya filed its assessment report on 30/12/2020 recommending the applicants herein for adoption of the baby.

5. Having carefully looked the application herein, affidavits in support and the testimonies by both applicants, the guardian ad litem and the proposed legal guardians, I isolate the issues for determination to be; whether the baby is available for adoption; whether the applicants have

met the requisite conditions for adoption and if the proposed adoption is in the best interests of the baby.

6. On the first issue, it is of note that the baby was abandoned at Moi Teaching and Referral Hospital on 06/02/2017 by his birth mother who is yet to be traced and identified. As evidenced by the final letter of the police dated 12/10/2017, all efforts to trace the parents of the baby have been futile. The baby has not been claimed by anybody and to that extent, I am of the opinion that the requisite consent under Section 159 (1) of the Children's Act should be dispensed with. The baby was declared free for adoption on 23/01/2019 by which time he was over the mandatory minimum age limit required of a baby before adoption pursuant to Section 158 (1) of the Children's Act.

7. The baby has been under the continuous foster care and control of the applicants from 05/02/2019 to date which is more than the requisite three months envisaged in Section 157(1) of the Act.

8. Article 14 of the constitution recognizes that any baby below 8 years found within Kenya and whose parents or nationality is unknown should be presumed to be a Kenyan citizen and I believe baby O Alias SB so qualifies.

9. The applicants are Kenyan citizens aged between 25 years and 65 years being the mandatory age requirement for both or either applicant before adopting any baby in accordance with Section 158 (1) of the Children's Act. They are fully aware of the consequences of this adoption and appreciate the same. Having been duly assessed by the Child welfare Society of Kenya, they were found to be medically, emotionally, mentally, morally and economically fit to adopt the baby. Such findings were confirmed by the court when the applicants, the representative of the adoption Society and the legal guardian were examined by the court. Up to that extent, I find the applicants to be suitable to adopt baby O Alias SB.

10. The principle of the best interests of a child is aptly enshrined in the constitution at under **Article 53 (2) of the constitution** and **Section 4(2) and (3) of the Children's Act** to be that 'a child's best interests are of paramount importance and of primary consideration in any matter concerning a child, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'.

11. Having been abandoned and now unclaimed, the baby has no known relative or family to identify with and is clearly in need of care and protection. The applicants have jointly demonstrated moral, social and financial ability to cater for the baby's basic needs including shelter, food, clothing, education, medical care and general and wholesome upbringing.

12. They appreciate their responsibilities and obligations towards raising the baby. I am convinced and satisfied that the baby is guaranteed a safe home, economic, moral and psychological growth and support. The baby has been living with the applicants from 05/02/2019 to date and has fully bonded with the applicants so that to separate them in my view would be prejudicial to the child's best interest which I am obligated to protect at all times.

13. The upshot from the foregoing, therefore, I do find the application by the applicants merited, I do allow it and grant the prayers that: -

a. That the consent of the unknown biological parents of Baby O Alias SB for the purposes of this adoption proceedings be dispensed with on the basis that they are unknown and cannot be traced ever since the child was abandoned shortly after birth.

b. That the applicants are permitted and authorized to adopt Baby O and they be at liberty to call, refer and name the child SB.

c. The court hereby appoints VGM & ZKM as the legal guardians of SB upon granting the adoption order.

d. That the Registrar General is directed and ordered to make the appropriate entries in the Adopted Children's Register in respect of baby O alias SB.

e. That SB is presumed and decreed a Kenyan citizen.

f. I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU, ONLINE, THIS 19TH DAY OF MARCH, 2021

PATRICK J O OTIENO

JUDGE

In the presence of:

Mr Mugambi for Kirimi for the adoptive parents.