



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 36 OF 2020

IN THE MATTER OF ADOPTION OF BABY SJM aka BABY WP

BMG.....1ST APPLICANT

RJW.....2ND APPLICANT

JUDGMENT

This judgment related to adoption proceedings commenced by an Originating Summons dated 16th June 2020. It is brought by BMG and RJW, herein the Applicants. The Applicants have cited Sections 154, 156, 157, 158, 159, 160, 163, 164 and 170 of the Children Act, 2001, Laws of Kenya asserting that they have met the legal prerequisites set out for adopting a child and that they have sufficiently bonded with the child. They are seeking following specific orders:

1. That the Applicants be authorized to adopt Baby SJM aka Baby WP, a minor who is to be known as EGM and the Registrar General be directed to enter this adoption into the Register of Adoptions.
2. That DMM and BNK be appointed as legal guardians of the minor.
3. That the child be presumed to have been born in Kenya.

In support of the Originating Summons, the Applicants have filed a Statement in which they give their full particulars. Both are Kenyan citizens (*copies of national identity cards provided*). They are a married couple having solemnized their marriage under the African Christian Marriages and Divorce Act on 29th June 2013 at All Saints' Cathedral Nairobi (*copy of marriage certificate provided*). They do not have a biological child of their own. They love children and are ready to adopt a child and give that child a loving family, conducive environment to live in and a happy upbringing. They applied to KKPI Adoption Society seeking to adopt a child and after assessment they were approved and placed with the child herein on 26th November 2019 for fostering with a possibility of adopting the child. They have fully bonded with the child and have incorporated their families in the process of adoption. They have been given support by their respective families.

The 1st Applicant runs a consultancy firm called Caliken Networks (E. A) Ltd while the 2nd Applicant was at the time of fostering working as a Sales Manager. She is currently in events management consultancy at [Particulars Withheld] Limited. They say they draw comfortable salaries and that they are financially stable with adequate resources to meet the needs of the child and cater for his upbringing and education.

The Applicants live in South C Nairobi in a three (3) bedroom apartment in a homely environment that is suitable for raising the child. They say they have no criminal records and have attached certificates of clearance from the Directorate of Criminal Investigations (*copies of the Police Clearance Certificates are attached*). They state that the KKPI has confirmed to them that the child has been freed for adoption and that they have not received or agreed to receive any payment or reward in consideration of the adoption. They have proposed DMM and BNK, their friends, to be the legal guardians of the child.

The background of the child is that he was born at Huruma Maternity and Nursing Home on 4th April 2019 to SJ who gave the name of the father as AA. A letter from the Huruma Maternity and Nursing Home dated 26th June 2019 addressed to "Whom it may concern" attest to that. Due to complications the child was referred to Pumwani Hospital on 5th April 2019. The mother abandoned the child at Pumwani Hospital. The matter was reported at Shauri Moyo Police Station through OB No. xx/xx/xx/2019 and No. xx/xx/xx/2019. The police tried to trace the relatives of the child without success. Through Kamukunji Sub-County Children's Office the child was placed with House of Charity Children's Home through a request dated 11th April 2019. The child was officially committed to the House of Charity Children's Home for three years by the Children's Court Nairobi on 11th September 2019 in Protection and Care Case No. 1219 of 2019. The child was freed for adoption by the KPPI Adoption Society vide their Report to declare the child free for adoption and a certificate to that effect issued on 15th November 2019.

On 2nd July 2020 CWK was appointed by this court (Dulu, J) as Guardian Ad Litem of the child. At the same time the court directed the Catherine and the Director of Children Services do investigate the suitability of the Applicants to adopt the child and file a report within 45 days. Both reports have been filed. Both reports are favourable and positively recommend adoption by the Applicants. Both reports paint the Applicants as financially stable and suitable to adopt. The child has bonded well with the Applicants as attested by the reports. The report by the Guardian ad litem, which is indicated as being prepared pursuant to court order given on 2nd July 2020, does not bear a date but that of the Director of Children Services is dated 20th August 2020.

I have considered this matter and have read all the reports filed in this cause. I am satisfied that the law under Sections 154, 156, 157, 158, 159, 160, 163, 164 and 170 of the Children Act, 2001, Laws of Kenya has been complied with. The Applicants, who have been fostering the child, have the resources to give the child comfortable life and education. In the applicants the child will get the love of two parents and family which he would not have received if he was not adopted. This goes to further the best interest of the child that Article 53 of the Constitution and Section 4 of the Children Act give emphasis to. It is apparent to me that the biological parents of this child have not been traced despite the efforts by the police to look for them. Their consents cannot therefore be obtained. The child, after investigations, has been freed for adoption and the reports about the Applicants are favourable. This court has no reason to decline granting an adoption order as prayed. Consequently I hereby allow the Originating Summons dated 16th June 2020 in the following orders:

1. That consent of the mother and father of the child is hereby dispensed with.
2. That BMG and RJW, the Applicants are hereby authorized to adopt Baby SJM aka Baby WP.
3. That the child shall be known as EGM.
4. That the child is hereby presumed to have been born in Kenya and his date of birth shall be 4th April 2019.
5. That the Registrar General is hereby authorized to enter this adoption in the Register of Adoptions.
6. That DMM and BNK are hereby appointed legal guardians of EGM.
7. That CWK is hereby discharged as Guardian ad litem.

Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 27TH MAY 2021.

S. N. MUTUKU

JUDGE