



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 70 OF 2015 (OS)

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF AN APPLICATION FOR AN ADOPTION OF BABY B.

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY

NDJN.....1ST APPLICANT

WM.....2ND APPLICANT

JUDGMENT

1. The applicants NDJN and WM are a Kenyan couple aged 49 and 43 years, respectively. The 1st applicant is a food technologist while the 2nd applicant is a business woman. They solemnized their marriage on 6th June 2014 at the Registrar's Office in Nairobi after being married customarily since 2006. The couple has no child of their own. On 16th March 2015 they filed this originating summons seeking to adopt Baby B.

2. Baby B. was estimated to have been born on 20th February 2012. On 24th April 2012 he was found abandoned at Huruma District Hospital in Eldoret. The child was rescued by a staff of the Hospital and the matter reported at Eldoret Police Station where it was recorded as OB No. [...]. The child was referred to Moi Teaching and Referral Hospital for medical care. The child remained at the Hospital until 14th May 2012 when he was referred to Child Welfare Society of Kenya (C.W.S.K.) for temporary care and protection. While at the Society, the child was admitted at C.W.S.K. Mama Ngina Kenyatta Temporary Place of Safety by the Eldoret Children's Court vide **Protection and Care Case No. 118 of 2012**. The final police letter from the Eldoret Police station dated 4th September 2014 indicated that the search of the child's relative was unsuccessful and that no one had gone to claim him. The child was declared free for adoption by Child Welfare Society of Kenya vide Certificate No. [...] on 28th February 2017. On 22nd February 2013 the child was placed with the applicants for foster care. He has been with them since.

3. On 5th November 2020 the court appointed JMM as the guardian *ad litem* and ordered her and the Director of Children Services to each prepare and file the requisite reports within 45 days after carrying out a social inquiry on the applicants to determine their suitability to adopt the child. The two reports were filed. Both recommended the applicants to be allowed to adopt the child. The reports found that the applicants were socially, emotionally and financially stable and suitable to adopt the child. It was also found that the child had bonded well with the applicants and the other members of the family.

4. The Director of Children Services correctly pointed out that the child had been handed over to the applicant for foster care on 22nd February 2013, and that it was not until 28th February 2017 that C.W.S.K. declared the child free for adoption. Under **section 156(1) and (2) of the Children Act (No. 8 of 2001)**, it is an offence for an adoption society to commence the process of adoption before the child has been declared free for adoption. When the court sought from the Society why it found itself in these circumstances, the Chief Executive Officer stated as follows:-

“The placement was done in the best interest of the child as investigations into the child's matter were still ongoingthe applicants were made aware that they were assuming temporary care for the child and that tracing efforts were going on until the final court order.....”

She further stated that they were hoping to trace the child's family in bid to reunite the child with them.

5. I do not accept the explanation. In any case, the child should have been kept with the C.W.S.K. while the investigations were going on. Secondly, C.W.S.K. is experienced enough to know that the conduct it was engaged in was offensive.

6. Nonetheless, I consider that the child has been with the applicants for about 9(nine) years. Ordering its removal at this stage could not be in its best interest.

7. The court finds that it is in the best interest of the child to be adopted by the applicants. The applicants have demonstrated their capability to provide a conducive home and family environment in which the child will grow and develop. They will assume all parental rights and obligations of the biological parents of the child once adopted, and shall treat him as if he was born to them. They have been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit their property. The applicants shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child. The court dispenses with the consent of the mother of the child as he was found abandoned.

8. After finding that all conditions for a local adoption under the **Children Act** have been met, I make the following orders:-

a) the applicants NDJN and WM are hereby allowed to adopt Baby B.;

b) Baby B. shall henceforth be known as MJJ;

c) the child's date of birth shall be 20th February 2012, and shall be presumed Kenyan citizen having been found abandoned at Huruma District Hospital in Eldoret in Kenya;

d) ELM is hereby appointed as the child's legal guardian in the event of the death or incapacity of the applicants before he is of full age and fully self-reliant;

e) the Registrar-General is directed to enter this adoption in the Adopted Children Register; and

f) the guardian *ad litem* is hereby discharged.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 24TH DAY OF MAY 2021.

A.O. MUCHELULE

JUDGE