



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO E-050 OF 2020

IN THE MATTER OF MB ALIAS BABY NM

PNK.....1ST APPLICANT

WM.....2ND APPLICANT

JUDGMENT

PNK and WM moved to this court through Originating Summons dated 4th September 2020 seeking the following orders that:

1. LWK of P.O Box Number [...] Nairobi, in the Republic of Kenya be appointed Guardian *Ad Litem*.
2. The Director of children's department, Ministry of Labour, Social Security and Services investigate the applicants fitness to adopt and file a report.
3. The Applicants be authorized to adopt a male child MB alias Baby NM to be known as KN.
4. The child be presumed a Kenyan citizen by birth.
5. The child's date of birth be 22nd February, 2018 and the place of birth be Nairobi.
6. The Registrar General be directed to enter the adoption in the adopted Children's register.
7. The director of immigration be authorized to issue the child with a Kenyan passport.
8. AWK be appointed the legal guardian of the child

The application is supported by statement of the Applicants dated 31st August 2020 in which they stated that they are husband and wife born 1975 and 1974 respectively; that they have been married since 2012 (marriage certificate dated 21st August 2020 attached); that they are Kenyan citizens desirous of adopting the child whom they have fostered for more than one year. They state that they have no other child and that their motive to adopt the child herein has been prompted by their inability to have children of their own. This is evidenced by KKPI report dated 17th June 2018. Further, the Applicants state that they are Christians with no criminal record. They state that the 1st Applicant is a businessman while the 2nd Applicant is a farmer and are therefore financially stable and have capacity to provide the child with basic needs like food, shelter, clothing education and medical care. Further, they state that they own rental property in Eastlands and a residential home where they reside, 3 cars and parcels of land in Malindi and Kahawa Sukari. They have attached documents to attest to their statement.

They further state that they are mentally, physically and emotionally fit and healthy to parent the child. They have attached medical reports to that fact. They have also attached copies of certificates of good conduct from the Directorate of Criminal Investigations as evidence that they have no criminal record. They state that they have been assessed by the Kenyans for Kenya Initiative Adoption Society (KKPI) and found to be fit to adopt the child. They state that their family has given them support to adopt the child and in that regard they have proposed AWK, 1st Applicant's sister, to be appointed legal guardian of the child. The Applicants have also filed an Affidavit in support of the Originating Summons.

The child, subject of these adoption proceedings, was born to a single mother NKM on the 22nd February 2018. His mother approached KKPI Adoption Society through her letter dated 23rd February 2018, and expressed her desire to give up the child for adoption due to economic hardship and lack of support from the father of the child. She swore an affidavit of consent of adoption of a child dated 17th April 2018, which was well beyond the six weeks required by law. On 14th March 2018 the child was admitted to New Life Home Trust Kilimani for protection and care. On the 6th of March 2019 the child was formally committed to New Life Home Trust Kilimani through Protection

and Care Case No. [...] Nairobi Children's Court. The child was then declared free for adoption by KKPI Adoption society on the 27th March 2019. A declaration certificate S/No. [...] was issued to that effect in accordance with section 156(1) of the Children's Act.

The child was placed under the care and control of the Applicants on the 5th April 2019. The Applicants have averred that the subject child has been in their care and control for a period of more than one year. This satisfies Section 157(1) of the Children Act that provides that a child will only be available for adoption if that said child has been in continuous care and control of the Applicant(s) for three (3) consecutive months within the Republic of Kenya.

Pursuant to chamber summons dated 4th September 2020, the court appointed LWK as Guardian *ad litem* on 24th February 2021. The court further directed the Director of Children Services to investigate the suitability of the Applicants to adopt the child and file a report within 45 days. The guardian ad litem on the other hand was also directed to investigate the matter and file a report within the same period.

Both reports have been filed. That of the Guardian ad litem is dated 19th January 2021. The report is based on home visits. It speaks highly of the environment within which the child is growing and recommends that the Applicants be allowed to adopt the child.

The report by the Director of Children Services is dated 18th March 2021. It is signed by Nyarang Odundo, a Children's Officer and countersigned by Hoyd Isadia, Deputy Director. The report shows that the child is well adjusted and has bonded well with both applicants whom he calls *mummy* and *baba*. It shows that the Applicants have met all the legal requirements for adoption. The report recommends that the Applicants be allowed to adopt the child.

I have read all the pleadings and the attached documents in support. I have read both reports from the Guardian Ad Litem and by the Director of Children Services. Both reports are positive and recommend the adoption. The child was offered for adoption by his biological mother who has given her consent as required under Section 158(4) as read together with Section 159 of the Children's Act. The child has been freed for adoption as per the Certificate No. [...] from KKPI dated 27th March 2019. The 1st Applicant having been born in 1975 and the 2nd Applicant on the 26th September 1974 makes them over 21 years older than the child. This complies with **Section 158 (1) (a)** of the Children's Act.

The Applicants, as evidenced by the documents attached in support of this application, have the financial means to give the child a good life in terms of food, shelter, education, medical needs and a good future. The Applicants live a good neighbourhood where the child can thrive in a good environment. They also profess Christian faith and will give the child good moral standing in society.

The Applicants have proposed AWK as a legal guardian of the child in the event both the Applicants become incapacitated. AWK has given her consent to be appointed legal guardian through an affidavit sworn on the 27th August 2020. This has fulfilled the requirements of the law under Section 164 of the Children's Act

I have taken into account all the pleadings and documents in support of the application as well as the necessary reports filed herein. The power of this court to grant Adoption Orders is derived from Section 154 of the Children Act No. 8 of 2001. In exercising that power this court must be guided by the law, specifically the provisions of Article 53 (2) of the Constitution of Kenya 2010 and Section 4 of the Children Act which lays emphasis on the best interest of the child as that of utmost paramountcy on any decision touching on the child taken by any person and/or institution including a court of law. With this legal requirement in mind, it is my finding that the adoption procedures and the process leading to these proceedings were conducted within the confines of the law. I am satisfied that in granting this adoption order this court will be furthering the best interest of the child. Consequently, I hereby allow the Originating Summons dated 4th September 2020 and grant the following orders:

1. That the Applicants, PNK and WM are hereby authorized to adopt MB alias Baby NM.
2. That MB alias Baby NM shall be known as KN.
3. That KN is hereby presumed a Kenyan Citizen by birth and his date of birth shall be 22nd February 2018 and his place of birth shall Nairobi.
4. That the Registrar General is hereby directed to enter this adoption in the Adopted Children's Register.
5. That the Director of Immigration is hereby authorized to issue KN with a Kenyan Passport.
6. That AWK is hereby appointed the legal guardian of KN in the event of the death or incapacity of the Applicants before the child is of age or independent.
7. That LWK is hereby discharged from being Guardian Ad Litem.

Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 20TH MAY 2021.

S. N. MUTUKU

JUDGE