



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 1 OF 2020

IN THE MATTER OF THE CHILDREN'S ACT 2001

IN THE MATTER OF BABY JKM

JUDGMENT

PMM and ANK, hereinafter called the Applicants, have come to this court by way of Originating Summons dated 2nd December 2019 seeking an adoption order in respect of Baby JKM, the child. They are seeking the following orders:

1. That the Applicants, PMK and ANK be authorized to adopt Baby JKM.
2. That upon making of the adoption order the said child be known as JKM.
3. That the minor be presumed to be a Kenyan citizen born on 23rd September 2015 at Vihiga Health Centre and the Director of Immigration Services do issue the child with a Kenyan Passport.
4. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
5. That DNK and JMM be appointed legal guardians in respect of JKM.
6. That the court dispenses with the consent of the biological parents.

In the statement in support of this Originating Summons, the Applicants state that they are married (certificate of marriage attached) and that PMM comes from Kasunguni Sub-Location in Makueni County and ANK comes from Kaiani Sub-Location in Machakos County. That both reside at Mulango Kubwa Sub-Location in Mathare East in Nairobi County (letter from the area chief attached). That both work for gain in Nairobi County, PMM as a businessman selling Motor Vehicle Spare parts and earns a monthly income of Kshs 50,000 while ANK is a Front Office cum Messenger at [particulars withheld] within Nairobi earning a monthly gross salary of Kshs 20,000 (bank statement attached). That PMM was born in 1970 at Mavoko Location in Machakos County and ANK was born in 1964 at Kaiani Sub-Location in Machakos Count. That both are Kenyan citizens (copies of their identity cards are attached).

They further state that they profess Christian faith and worship at Redeemed Gospel Church (copy of a letter from their Pastor at Pangani Celebration Centre is attached). They state that they are not able to have children of their own de to medical reasons. That they received JKM in their care and protection on the 24th January 2018 from Mumias Kids Centre at Mumias which is managed by Kenya Children's Homes (they have attached an agreement with the Kenya Children's Homes). They state that they will bring up the infant in the Christian faith. They state that they have not received or agreed to receive and no one has made, given or agreed to make or give them any payment or reward in consideration of the adoption.

They state that they have received all necessary consents from the Kenya Children's Homes, the children home where the child was committed prior to their fostering him and the Adoption Agency has confirmed that the child is free for adoption. They state that they have been cleared by the police and that they value integrity. They state that the child has been dependent on them since 24th January 2018 when he was placed under their foster care and that they have not made a previous application in respect of the child.

From the Report of the Kenya Children's Child Freeing Report dated 20th September 2017, the child was born on 23rd September 2015 at Vihiga Health Centre, Mumias in Vihiga County and his birth entered on Birth Notification Entry No. 0791508169. His biological parents are BL (mother) and A (father). The two are related as cousins. The birth of the child was considered a taboo in the community and he could not be accepted. The community believes that such a child would bring bad omen or curse to the parents and their families. Information in the report shows that the biological mother was also a minor. She was assisted by her mother ENL to go through the adoption process and affirmed that it was in the child's best interest to offer him for adoption. The Assistant Chief was also involved in the matter. A vacancy was sought at Mumias Kids Centre and the child was admitted for care and protection. The child was officially committed to Mumias Kids Centre through a court order issued by Mumias Children's Court on 28th October 2015 vide Protection and Care Case No. 46/15. The Biological

mother and her mother signed a consent offering the child for adoption.

At the time of writing this judgment, there are a number of documents missing from the court file including the consents of the biological parents of the child and/or their parents/guardians if they are underage. These documents are required in the court file for completeness of the court record. The documents in respect of the social inquiry by the Kenya Children's Home and medical reports of the Applicants are also not included. As a result of this omission this judgment was not read on 6th May 2021 as earlier scheduled. It was postponed to 20th May 2021 to enable the applicants' counsel to avail those documents in court.

I have now confirmed that the documents are now in the file. The Birth Certificate of Baby JKM shows that the child was born on 23rd September 2015 at Vihiga Health Centre to B.M.L. I have seen a letter from the grandmother of the child ENL dated 28th September 2013 addressed to Kenya Children's Home requesting to have the child taken up by the Children's home because the child having been born out of incest cannot be brought up in the community. I have also seen letters from BML, the mother, and A. I, the father both dated 28th September 2015 confirming that they are the parents of the child and that they are related as first cousins. They are asking Kenya Children's Home to take up the child for adoption. The Office of the Chief, Ileshi Location Kakamega also wrote a letter dated 28th September 2015 confirming the birth of the child and the fact that the child could not be brought up in the community as per the custom.

I have also confirmed that the foster care agreement document is now available. So too are the committal documents committing the child to Mumias Kids Centre vide Mumias Children's Court Care and Protection Case No. 46 of 2015 as well as medical records of the child. This satisfies this court that all the documentation in respect of the process of leading to this Originating Summons is now available in the court file.

The child has been freed for adoption by the Kenya Children's Home Adoption Society vide the Certificate Declaring a Child Free for Adoption dated 20th September 2017 as well as a Report of the same date.

On 15th July 2020, this court (Muchelule, J) appointed Catherine Wambui Kinyua as Guardian Ad Litem of the child and directed her and the Director of Children's Services to investigate the suitability of the Applicants to adopt the child and file their reports within 45 days. Both reports are in the file and they are favourable. I have read them and find them satisfactory. They recommend that the Applicants be allowed to adopt the child. The proposed legal guardians, JMM and DNK, have consented to being so appointed. I am therefore satisfied that law under Part XII of the Children Act, 2001, has been complied with. The applicants fulfil the legal requirements for adopting the child and they have the means to take care of the child and to ensure that the child's best interest is given paramountcy. Consequently the Originating Summons dated 2nd December 2019 is hereby allowed. I issue the following orders:

- 1) That the Applicants, PMM and ANK be and are hereby authorized to adopt Baby JKM who shall retain the name JKM.
- 2) That JKM shall be presumed to be a Kenyan citizen born on 23rd September 2015 at Vihiga Health Centre.
- 3) That the Director of Immigration Services is hereby directed to issue JKM with a Kenyan Passport.
- 4) That the Registrar General is hereby directed to enter this adoption in the Adopted Children's Register in accordance with the particulars set out in the schedule of this Order.
- 5) That DNK and JMM are hereby appointed legal guardians of JKM.
- 6) That the consent of the biological parents is hereby dispensed with.
- 7) That CWK is hereby discharged as Guardian Ad Litem.

Orders shall issue accordingly.

Dated, signed and delivered this 20th May 2021.

S. N. MUTUKU

JUDGE