



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 28 OF 2020 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT (NO. 8 OF 2001)

AND

IN THE MATTER OF BABY JP alias ABANDONED BABY alias JP

AND

AN APPLICATION FOR ORDERS OF ADOPTION OF JP alias ABANDONED BABY alias JP

BY

SMM and his wife AM

JUDGEMENT

1. By the Originating Summons dated 5.3.2020 and mended on 18.5.21, the Applicants SMM and his wife AM seek to adopt a child known as Baby JP alias abandoned baby alias JP. The Applicants were assessed by Kenyan to Kenyan Peace Initiative Adoption Society, a registered adoption society and taken through the adoption process and its implications. Following the assessment, the society's case committee sitting on 6.10.17 found the Applicants to have met the legal and social parameters required for adopting a child. The child was placed with the Applicants on 17.11.17.
2. The child who is estimated to have been born on 1.9.16 was found abandoned in a bathroom in a plot at [Particulars Withheld] estate along Ngong road, Nairobi on 8.9.16 at around 1300hrs. The child was rescued by one Mr. TKN and other members of the public. The matter was reported at Riruta Police Station by vide Occurrence Book Number xx/xx/xx/2016. On the same day, the child was admitted at House of Charity Children's Home for temporary care and protection pending committal. Thereafter on 21.11.16, vide Protection and Care Case Number 352 of 2016, the Children's Court at Nairobi formally committed the child to the same home for a period of 3 years. Riruta Police Station in a final letter dated 30.5.17 confirmed that since the child was reported abandoned on 8.9.16, no one had come forward to claim her.
3. When hearing of this commenced on 4.2.21, the Court appointed WNK as guardian *ad litem* for the child pending the hearing and determination of the adoption application, in accordance with Rule 8 of the Adoption Rules.
4. The Applicants have gone through the requisite assessments, and reports in respect thereof have been filed. Kenyan to Kenyan Peace Initiative which arranged the adoption of the child filed its report on dated 12.5.21. For the Director of Children Services was filed a report dated 25.3.21 prepared by Nyaranga Odundo, a Children's Officer and countersigned by Hoyd Isadia, Deputy Director, Children Services. WNK the Guardian *ad litem*, also filed her report. I have carefully assessed the said reports. They are all favourable, and recommend the proposed adoption.
5. I note that the child has been in continuous care and control of the Applicant for a period of about 3 years which is more than the statutory 3 months required under Section 157 of the Act. The Applicants are not younger than 25 years nor older than 65 years. They are more than 21 years older than the child. Section 158 of the Act has thus been complied with. The Applicants have been made aware of the consequences of an adoption order as well as the rights of an adopted child. They shall assume all parental rights and duties of the biological parents in respect of the child. I am satisfied that they fully understand that the adoption order is final and binding during the lifetime of the child and that they cannot under any circumstances give up the child. They also understand that the child shall have the right to inherit their property. The Applicants have demonstrated that they have the social and emotional capacity as well as the material resources to raise the child in a loving home environment. They propose to name the child JKM.

6. The Applicants have nominated EMM to be the legal guardian of the child, in the event of the Applicants dying or becoming incapacitated before the child is of full age. The proposed legal guardian was however not availed to the Court for examination as to her readiness, willingness and ability to be legal guardian of the child. No reason was given to the Court for her failure to appear before Court. Accordingly, the Court is unable to appoint her as legal guardian for the child. In this regard, the Court does note that under Section 164 of the Act, appointment of a guardian in the case of a local adoption, is not mandatory.

7. The Applicants seek that the Director of Immigration be authorised to issue the child with a Kenyan passport. This is an order that cannot be issued in these proceedings and the Court declines to grant the same. The Applicants are directed to make the requisite application to the Director of Immigration, for consideration.

8. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interests of the child that he be adopted by the Applicants. The Court is further satisfied that all the legal requirements for a local adoption have been met and makes the following Orders as prayed in the Originating Summons herein:

a) The Applicants SMM holder of national identity card number xxxxxxxx and his wife AM holder of national identity card number xxxxxxxx are hereby allowed to adopt Baby JP alias abandoned baby alias JP, who shall henceforth be known as JKM.

b) The child's date of birth is hereby declared to be 1.9.16.

c) The child is hereby declared to be a Kenyan citizen by birth.

d) I direct the Registrar General to enter this order in the Adoption Register.

e) WK the guardian *ad litem* is hereby discharged.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JUNE, 2021

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

.....**Court Assistant**