



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. E058 OF 2020 (OS)

AND

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

AND

IN THE MATTER OF BABY DE

AND

AN APPLICATION FOR ORDERS OF ADOPTION OF BABY DE

BY

MNK and his wife VNK

JUDGEMENT

1. By the Originating Summons dated 24.9.20, the Applicants MNK and his wife VNK seek to adopt a child known as Baby DE. In their quest to adopt a child, the Applicants were assessed by Little Angels Network, a registered adoption society and taken through the adoption process and its implications. The society's case committee sitting on 28.2.19 found the Applicants to have met the legal and social parameters required for adopting a child. The child was placed with the Applicants on 22.3.19.
2. Baby DE who is estimated to have been born on 21.5.18. He was abandoned by his mother at a clinic in [particulars withheld], Nairobi. The doctor in charge of the clinic reported the matter at Riruta Police Station by vide Occurrence Book Number 47/21/05/2018. On the same day, the child was admitted at New Life Home Trust for temporary care and protection pending committal. The Children's Court at Nairobi did on 8.8.18 *vide* Protection and Care Case Number 449 of 2018 formally commit the child to New Life Home Trust for a period of 3 years. In its final letter dated 30.1.19, Riruta Police Station confirmed that since the child was reported abandoned on 21.5.18, no one had come forward to claim him.
3. On 19.1.2020, AK was appointed 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. Little Angels Network which arranged the adoption of the child filed its report dated 28.2.19. For the Director of Children Services was filed a report dated 3.2.21 prepared by Nancy Waswa, Principal Children's Officer and countersigned by Mary Mbuga, Assistant Director, Children Services. AK the Guardian *ad litem*, filed his report dated 5.2.21. I have carefully assessed the said reports. They are all favourable, and recommend the proposed adoption.
5. The child has been in continuous care and control of the Applicant for a period of 2 years and 3 months 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 the child shall have the right to inherit their property. The Applicants cannot under any circumstances give up the child. The Applicants have demonstrated that they have the psychological and emotional capacity as well as the material resources to raise the child in a loving home environment. From my observation in Court the child appears to have bonded well with the Applicants. They propose to name the child DM.
6. The Applicants have nominated their family friends SMN and his wife MWM 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 guardians were however not availed to the Court for examination as to their readiness, willingness and ability to be legal guardians of the child. No reason was given to the Court for

their failure to appear before Court. Accordingly, the Court is unable to appoint them as legal guardians 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. 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 MNK holder of national identity card number xxxx and his wife VNK holder of national identity card number xxxx are hereby allowed to adopt Baby DE, who shall henceforth be known as DM.
- b) The child's date of birth is hereby declared to be 21.5.18.
- 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) AK, 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**