



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 156 OF 2019

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF A BABY MD

BY

BNN AND FMN (APPLICANTS)

JUDGMENT

1. The Applicants BNN and FMN are in a monogamous marriage which was solemnized at the Registrar's Office in Machakos on 4th April 2018 as evinced in the Marriage Certificate serial no.xxxxxx. They have no children of their own and wish to adopt a male child known as Baby MD through the originating summons dated 1st November, 2019.
2. From the pleadings, the court gathers that both applicants are engaged in self-employment in businesses within Nairobi. They reside in Nairobi County and both profess the Christian faith.
3. The records before the court indicate that the minor was presumably born on 8th April, 2018 and was found abandoned in Nakuru on 11th April 2018. The child was rescued by good Samaritans who reported the matter to Rhonda Police Station vide OB Number 20/xx/x/xxxx. . The District Children's Officer Nakuru was informed and the child was temporarily placed at New Life Home Trust.
4. On 12th April, 2018, the Children's Court in Nakuru committed the child vide P & C 251 of 2018 to New Life Home Trust Nakuru. On 25th October, 2018, Rhonda Police Station issued a final letter confirming that the biological parents of the child were not traced, nor did anyone come forward to claim the child. On 13th December, 2018 the Applicants took the child for purposes of foster care with a view of adopting him. A foster care agreement was signed on the same day.
5. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report dated 31st October, 2018. They also issued a Certificate Serial No. xxxxxx declaring the child free for adoption. The guardian ad litem RWM filed a report which was favourable and recommended the adoption of the child by the Applicants.
6. An officer from the office of the Director of Children Services conducted home visits and established that the applicants are financially and emotionally capable of providing for the upkeep and education of the child. She filed a report dated 18th May, 2021 recommending the adoption for reasons that the child stands to gain from the opportunities provided by the Applicants and that he stands to gain a stable home. Further that they have fulfilled the statutory requirements.
7. This is a local adoption and from the record the Applicants have fulfilled all the legal requirements relating to the adoption of the child. The consent of the biological parents was dispensed with since the child was abandoned at infancy and the parents could not be traced to give the consent. The child who is now three years old was in Court during the virtual hearing and appeared to be thriving. He also appeared to be free and to have bonded well with the Applicants.
8. I also note that the 1st applicant was born in 1976 and is 44 years old while the 2nd applicant was born 1987 and is 33 years old. They are therefore within the age limit eligible to adopt, being adults having attained the age of twenty-five years and are at least twenty-one years older than the child, but have not attained the age of sixty-five years as provided by **Section 158 (1) (a)** of the Children's Act No. 8 of 2011.
9. I have examined the evidence tendered herein against the litmus test of the best interest of the child as required in **Article 53 (2)** of the Constitution and **Section 4 (2) & (3)** of the Children's Act. Consequently my considered view is that it is in the best interest of the child who is the subject of these proceedings to be adopted by the Applicants. Reasons wherefore, I allow the prayers sought in the amended Originating Summons dated 1st November, 2019 and Order as follows:

- i. The Applicants BNN and FMN be and are hereby allowed to adopt **Baby MD** who shall henceforth be known as **LLNN**
- ii. His date of birth shall be 8th April 2018. He is presumed to have been born in Kenya in accordance with Article **14(4)** of the **Constitution**, and the place of birth shall be Nakuru.
- iii. LWG is hereby appointed as the legal guardian in the event that the Applicants die, or are incapacitated by ill health.
- iv. The Registrar General is directed to enter this Order in the Adopted Children’s Registry.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan Passport.
- vi. The guardian ad litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 29TH DAY OF JULY, 2021.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Applicants