



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. E045 OF 2021 (OS)

AND

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

AND

IN THE MATTER OF EMN

AND

AN APPLICATION FOR ORDERS OF ADOPTION OF EMN

BY

GMK and his wife RWK

JUDGEMENT

1. By the Originating Summons dated 13.5.21, the Applicants GMK and his wife RWK seek to adopt a child known as EMN. The child is the biological child of the female applicant and was born on 22.6.16 in Nyandarua District Hospital. The child's biological father BAW disappeared from the 2nd Applicant's life when he learnt that she was pregnant.
2. The Applicants got married in October 2016 when the child was 3 months old and have been raising the child together since. The Applicants approached the Kenya Children's Home Adoption Society, a registered adoption society seeking approval to adopt the child. The Applicants were assessed and taken through the adoption process and its implications. The female Applicant consented to the adoption of the child vide Certificate of Acknowledgement dated 3.3.21. After assessment, the society on 21.5.21 found the Applicants to have met the requirements to adopt. The society further recommended the adoption of the child by the Applicants and a report to that effect duly filed.
3. When the matter first came to Court 3.6.21 on hearing of this MN was appointed 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. Following further assessment of the Applicants, reports were filed. For the Director of Children Services was filed a report dated 15.7.21 by Mary Atati, Assistant Director and countersigned by Hoyd Isadia, Deputy Director, Children Services. MN the Guardian *ad litem*, also filed her report dated 15.7.21. I have carefully assessed the said reports which are all favourable, and recommend the proposed adoption.
5. I note that the child has been in continuous care and control of the Applicants for a period of about 5 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 together 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. They propose to name the child ENM.
6. The Applicants have nominated the female Applicant's sister, JGK 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 have sought an order that the child be presumed to be a Kenyan citizen by birth. Article 14 of the Constitution of Kenya, 2010 stipulates who is a citizen of Kenya by birth as follows:

(1) A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.

(4) A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.

8. The child herein is the biological child of the female Applicant who is a Kenyan citizen and holder of Kenya national identity card number [xxxx]. Accordingly, the order sought is unnecessary.

9. 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.

10. 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.

11. 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 she be adopted by the first Applicant. 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 GMK holder of national identity card number [xxxx] and his wife RWK holder of national identity card number [xxxx] are hereby allowed to adopt EMN, who shall henceforth be known as ENM.
- b) I direct the Registrar General to enter this order in the Adoption Register.
- c) MNN, the guardian *ad litem* is hereby discharged.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF AUGUST, 2021

M. THANDE

JUDGE

In the presence of: -

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

..... **Court Assistant**