



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**ADOPTION CAUSE NO. E009 OF 2020**

**IN THE MATTER OF BABY VK**

**MKN.....APPLICANT**

**JUDGMENT**

1. The applicant herein moved this court by way of Originating Summons dated 13<sup>th</sup> day of December, 2020 under Rule 4 and 14 of the Adoption Rules and Section 157(1) and 158(1) of the Children's Act and seeking for orders: -

- 1) *spent*
- 2) *that the consent of the infant's natural parents be dispensed with.*
- 3) *That the applicant be authorized to adopt Baby VK.*

2. The application is supported by the applicant's affidavit sworn on the 13<sup>th</sup> December, 2020, wherein the applicant adopted her statement in support of the application.

3. I have considered the application and the supporting documents together with the annexures.

4. Section 154(1) of the Children's Act governs Adoption matters and it bestows on this court the jurisdiction to make adoption orders. The Act provides for the conditions pre-adoption which are that; the child should be at least six (6) weeks old and should have been declared free for adoption by a registered adoption society in accordance with the rules prescribed in Section 156.

5. The child concerned should have been in continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant(s)' as the case may be, evaluated and assessed by a registered adoption society in Kenya, in an application for adoption and where there is a joint application, at least one of the joint applicants must have attained the age of twenty five years and at least twenty one years older than the child but has not attained the age of sixty five years; or (b) is a relative to the child or is the mother or father to the child.

6. Section 158(2) – (4) provides for further conditions which an applicant ought to comply with in filing the application for adoption which includes consent of the parents. However, Section 159 gives the court the powers to dispense with the said consent in the case of the parents or guardian of the child, that he has abandoned, neglected, persistently failed to maintain or persistently ill-treated.

7. In the instant case, the statement in support of the application indicates that the minor herein was born in the year 2017, to one Muthoni who abandoned her in the month of February 2018 with a lady called RK. That after a week hoping that the mother would return, she reported the matter to the police station and to Imenti North Sub-County Children's Office following which, the Meru Children's Court committed the child to Ripples International Newstart Centre, on the 19<sup>th</sup> day of April, 2018 for safe custody and care.

8. The above information has been confirmed in the letter dated the 5<sup>th</sup> day of March, 2018 by sub-county of Imenti North District Children's Officer. Further, there is a letter dated 13<sup>th</sup> day of March, 2018 by the officer in charge of Meru police station confirming that the child was one-year-old and that she was abandoned at the residence of one RK.

9. The applicant averred that the child was received in her care and possession in the month of March 2020 and thus she has been in continuous care and control of the applicant for a period of three consecutive months preceding the filing of the application.

10. From the annexed copy of the applicant's identity card, she was born on the 13<sup>th</sup> day of December, 1973 and hence at the time of the

application, she was of the requisite age and had qualified to adopt the child, in that, she had attained the age of twenty-five years and was at least twenty-one years older than the child. Further, it is clear that she has not attained the age of sixty-five years.

11. On record, is the letter dated the 31<sup>st</sup> January, 2019 from Meru police station to the effect that their efforts to trace the parents of the minor are unfruitful. The said letter was written to Ripples International Newstart Centre under whose custody and care the minor was placed vide a court order that was issued on the 19<sup>th</sup> day of April, 2018, in the Children's court at Embu in P&C 10 of 2018. As such, the consent of the parents ought to be dispensed with by virtue of Section 159.

12. The minor was placed in the care and possession of the applicant in the month of March, 2020. She stated that she is capable of taking care of her and that since the minor was placed under her care, she has shown positive progress and is coping well.

13. This court in deciding on matters relating to children is obligated to consider the best interests of the child. This is provided for under Article 53(2) of the Constitution and Section 4(2) and (3) of the Children's Act. In the case of **Re A.W. alias AN (a child) [2008] 1 KLR (G and F)**.

14. In furtherance of the interests of the minor herein, I hereby allow and grant the orders sought in prayers (2) and (3) of the Originating Summons dated the 13<sup>th</sup> day of December 2020.

15. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 4TH DAY OF AUGUST, 2021.**

**L. NJUGUNA**

**JUDGE**

.....for the Applicant