



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

ADOPTION CAUSE NO 3 OF 2021

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

IN THE MATTER OF BABY MA

MR.....1ST APPLICANT

BC.....2ND APPLICANT

Coram: Hon. Justice R. Nyakundi

Mr. Maiyo for the Applicant

RULING

1. Vide an Originating Summons dated 19th March 2021, the applicants moved the court seeking for orders: -

(i) **Spent**

(ii) **Spent**

(iii) **Spent**

(iv) **Spent**

(v) **That the applicants be authorized to adopt baby MA and the child be known as RKR**

(vi) **That the Registrar General be ordered to make appropriate entries in the Adopted Children's Register.**

(vii) **That the minor be considered a Kenyan citizen.**

(viii) **That the court do issue such further orders as may be deemed fit in the interest of the child**

2. The application is grounded upon a joint statement in support of an application for an adoption order dated 19th March 2021 and an affidavit jointly sworn by the applicants on the same day.

3. The applicants are Kenyan citizens by birth aged 51 and 45 years respectively. They are husband and wife having contracted their Christian marriage on 29th December 2001 at (particulars withheld). The first applicant is a lab analyst at [Particulars Withheld] while the second applicant works on their farm.

4. The applicants aver that they have been married for over 19 years but have not been blessed with any issues hence their motivation to adopt the minor herein so as to bring him up as their own to fulfill their marriage dream.

5. Now as regards the status of the minor, he is presumed to have been born on 25th June 2018. He was found abandoned in Nakuru. And taken to Nakuru Provincial Hospital for medical assessment and treatment. The incident was reported at Nakuru Police station under O.B No. xx/xx/x/2018. The minor was placed to Africa Gospel Church baby Centre by the sub county children officer Nakuru as a child in need of

care and protection in accordance to Section 119 of the Children Act 2001 on 14th May 2019 and a committal order issued to that effect care and protection No. xxx/18.

6. The Kenya Children's Home Adoption Society declared the minor herein free for adoption under certificate number 1907 on 16th October 2019.

7. Prior to the hearing, the Director Children Services filed her assessment report on the 21st October 2021 prepared by Diana Jelimo Komen recommending the adoption. The Kenya Children's Home Adoption Society also filed its report on 2nd November 2021 recommending the adoption. Both reports have vouched for the applicants as being committed and faithful Christians, kind, hardworking and financially capable of taking care of the minor without any strain.

8. The matter was fixed for hearing on 22/11/2021 where the 1st and 2nd applicants testified as PW1 and PW2 respectively in support of the cause. GCK, the proposed guardian ad litem testified as PW3.

9. I have considered the application herein, and the reports filed by both the Director Children Services and the Kenya Children's Home Adoption Society and the testimonies of PW1, PW2 and PW3. The applicants' Originating Summons was filed in court on 19th March 2021 by which time the applicants had been in continuous care and control of the child for close to two years from 2019. It follows that the applicant's application satisfies the proviso to section 157(1) as well.

10. Section 157(1) of the Children Act provides;

“...no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the 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 or applicants, as the case may be evaluated and assessed by a registered adoption society in Kenya.”

11. **On the age factor and in view of** Section 165(2) (c) of the Children Act, the maximum age beyond which a person cannot make an application for adoption is set at 65. As mentioned earlier, the applicants were aged 51 and 45 years respectively. It therefore follows that they are eligible adoptive parents as long as the requirement as to age is concerned.

12. The other important requirement is the issue of consent. Section 158(4) of the Children's Act requires an application for adoption to be accompanied by a written consent of the parent, guardian or a person who is liable by virtue of any order or agreement to contribute to the maintenance of the child or parents or guardians of the mother of the child or the court. And, if the child has attained the age of 14 years, his or her consent is required. A reading of Section 159(1) shows that the court has power to dispense with the consent if it is satisfied that the parents or guardian of the child has abandoned, neglected, persistently failed to maintain or ill-treated the child. It is worth noting that the minor herein was found having been abandoned in a bush somewhere in Nakuru and from the records, no person has laid claim on the child. The issue of consent does not therefore apply in the circumstances.

13. Section 159(3) (b) makes provisions that no adoption order shall be made if the applicants or an applicant has been charged and convicted by a court of competent jurisdiction for any of the offences set out in the Third Schedule to this Act or similar offences. The applicants swore an affidavit stating that they have never been convicted of any offence or charged before a court of law and have never received or paid money for the child in issue for purposes of these proceedings. Although no clearances certificates from the Directorate of Criminal Investigations was tendered before court to certify that the applicants have not been charged and convicted of any of the specified offences, from the reports tendered in court, I am inclined to believe that the applicants are generally good people with no criminal records as was stated in those reports.

14. Under Article 14(4) of the Constitution, a child found in Kenya who is, or appears to be, less than eight (8) years of age and whose nationality and parents are not known, is presumed to be a citizen by birth. It therefore follows that the child is deemed to be a Kenyan citizen by virtue of the above constitutional provision.

15. The reports tabled in court by the stakeholders have demonstrated that the applicants are financially stable capable of assuming financial responsibility for the child's medical care, education and general upkeep, as they have a farm which generates income. In addition, they have a home with a comfortable environment, which is suitable for nurturing the child and ensuring his full development.

16. This court in the case of **In re B (Baby) [2018] eKLR** held that the purpose of Kenya's Constitution and Children's Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in every adoption cause provision is of the best interest of that very child.

17. From the foregoing and in view of Section 4(2) and (3) of the Children's Act where I am required to consider the best interests of the child before making any decision affecting the affairs of the child, I am convinced that it is in the best interest of the child that he be adopted by the applicants so as to have home and also have parents to nurture, educate and protect him.

18. In the end, I allow the prayers sought in the Originating Summons dated 19th March 2021 and order as follows: -

i. The Applicants MR and BC be and is hereby allowed to adopt MA alias RKR (minor) who shall henceforth be known as RKR.

ii. GCK is hereby appointed as the legal guardian in the event that the Applicants dies, or is incapacitated by ill health.

iii. The Registrar General is directed to enter this Order in the Adopted Children's Register.

DATED, SIGNED AND DESPATCHED VIA THE EMAILS AT ELDORET THIS 26TH DAY OF NOVEMBER, 2021

R. NYAKUNDI

JUDGE