



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. E024 OF 2021

IN THE MATTER OF THE CHILDREN'S ACT 2001

IN THE MATTER ADOPTION OF

ABANDONED BABY B ALIAS BABY NB.....THE CHILD

AND

EAWK.....1ST APPLICANT

RNW.....2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 15th March 2021 by which the Applicants herein seek the following orders:-

“1. Spent

2. Spent

3. THAT the Applicants be authorized to adopt ABANDONED BABY B ALIAS BABY NB to be known as WWW.

4. THAT the child be presumed a Kenyan Citizen by birth

5. THAT child's date of birth be 23rd October, 2019 and the place of birth be KERUGOYA.

6. THAT the Registrar General be directed to enter the adoption in the Adopted Children Register.

7. THAT the Director Immigration be authorized to issue the child with a Kenyan passport.

8. THAT JRNK and MNN be appointed the legal guardians of the child in event of the death or incapacity of the Applicant before the child is of age or independent.

9. THAT the court be pleased to make any further orders it deems necessary”.

2. The Application was supported by the statement of the Applicants sworn on the same date and was canvassed by way of *vive voce* evidence.

3. The Applicants are a couple who have been in a legal marriage for the past **ten (10)** years. Their union has not been blessed with any child although the Applicants have previously adopted a child who is now aged **three (3)** years. They seek to adopt the Subject child in order to expand their family.

4. The Applicants inform the court that their family members are aware of and support their intention to adopt the child. They both confirm that they fully understand the legal implications of an adoption order. They undertake to accord to the child all the rights and privileges due to a biological child.

5. I have considered this Summons, the evidence of the witnesses as well as the material placed before the court. The prerequisites for an adoption order are set out in **section 156(1) of the Children's Act 2001** which provides as follows: -

“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”

6. The Subject child was born on **23rd October 2019**. He is therefore now about **2 ½ years** old which is above the **six (6)** week age limit provided for by the law.

7. **KENYA CHILDREN'S HOME ADOPTION SOCIETY** have annexed to their Report an original copy of their Certificate Serial Number **xxxx** dated **8th September 2020** declaring the Subject child Free for Adoption. In the premises, I am satisfied that the legal prerequisites for an adoption order have been met.

8. The court is obliged to analyze the material presented before it to determine whether the Applicants are suitable adoptive parents. The Applicants are both **Kenyan Citizens** as evidenced by the copies of their National Identify Cards, which have been annexed to the summons (Annexure **'ERW-8'**).

9. The Applicants are a couple who got married to each other on **8th April 2011**. They have annexed a copy of their marriage certificate Serial No. **xxxx** to the summons (Annexure **'ERW-9'**). The couple have no biological children of their own but have a child who was previously adopted vide **Nairobi Adoption Cause No 169 of 2019**. They now seek to adopt a second child to add to their family.

10. The Applicants are both committed Christians and intend to raise the child in the Christian Faith. They attend **CITAM – Valley Road Church** where they are active members of the Bible Study Group. Annexed to the Summons is a letter of Recommendation dated **20th September 2018** from their Pastor Rev. **GATHECA NAMATE of CITAM MINISTRIES** (Annexure **'ERW-10'**).

11. The Applicants are both gainfully employed. The 1st Applicant is a Team leader at **[Particulars Withheld]** while the 2nd Applicant is a **Customer Service Assistant at [Particulars Withheld] Ltd**. Their joint income is sufficient to provide for the maintenance and upkeep of their two children. The Applicants have annexed to the summons copies of their Bank Statements (Annexure **'ERW-11'**) as well as copies of Title Deeds for properties which they own. I am satisfied the Applicants are financially secure and are in a position to provide for the needs of the Subject child.

12. The Applicants have annexed copies of their medical Reports indicating that they are both in sound health (Annexure **ERW-'2'**). They have both also annexed copies of their clearance certificates issued by the **Kenya Police Service** proving that neither have criminal record (Annexure **ERW-'3'**).

13. The Applicant have appointed as legal Guardian for the child the brother of the 2nd Applicant and his wife. The two legal Guardians **JRNK** and **MNN** have both signed a letter of consent dated **14th March 2021** indicating their willingness to step in as Guardians for the child in the event of the unavailability of the Applicants.

14. Based on the material presented to this court I am satisfied that the two applicants are suitable adoptive parents.

15. The Subject child is believed to have been born on **23rd October 2019**. A few days after her birth the baby was found abandoned outside the homestead of a **ninety (90)** year old woman in **Kirinyaga County**. The child was rescued and taken to **Kerugoya District Hospital** for treatment. The matter was report at **Kerugoya Police station** vide **OB number 4 of 30th October 2019**.

16. Thereafter the **Kerugoya Children Centre** committed the child to **Neema House Infant Rescue Centre** for care and protection. On **16th September 2020** the child was released into the Custody of the Applicants under a **Foster Care Agreement**.

17. **Article 14** of the **Constitution of Kenya, 2010** deals with the question of Citizenship. **Article 14(4)** provides as follows: -

“(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.”

18. The Subject child was found abandoned at the age of about **five (5)** days in **Kerugoya**, which is within the **Republic of Kenya**. As such I declare the child to be a Kenyan Citizen by birth.

19. The Subject child was abandoned at a tender age. Efforts to trace the child's biological mother and/or other relatives have borne no fruit. The final Police Letter dated **27th July 2020 from Kerugoya Police Station** (Annexure-**ERW '5'**) confirms that the child's parents have not been traced and further that no person has come forward to claim the child. As such there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I waive the requirement for consent in line with **section 159(1)(a)** of the **Children Act**.

20. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. **Section 4(2)** of the **Children Act 2001** provides:-

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law,

administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration". (Own emphasis).

21. The Subject child was abandoned shortly after his birth. He faced an uncertain future living in childrens homes and other similar institution. This adoption allows the child the opportunity to grow in a loving and stable home environment. The child has been living in the Applicants home for the past year. I have no doubt that he has bonded with the Applicants.

22. The court was able to see the child online. He was a healthy, happy child who was comfortable in the arms of the 2nd Applicant. I have no doubt that the child is being well cared for.

23. I have perused the Reports prepared by the **Adoption Society**, the **Guardian Ad litem** and the **Director of Chidrens Services**. All three reports were positive and all recommended the Adoption.

24. The Applicants were said to be living in a spacious three bed-roomed house in the **Kariokor** area of **Nairobi**. The house was in its own compound with a security wall around it. There was adequate space for the children to play. The Applicants have also employed a nanny to assist in caring for the child. The environment was found to be conducive for raising a young child.

25. In conclusion I find that this adoption serves the best interest of the child. I allow the application and make the following orders:

- (1) The Applicants EAWK and RNW are authorized to adopt the child known as Abandoned Baby B alias Baby NB.**
- (2) Upon adoption the child shall be known as WWW.**
- (3) The child is declared to be a Kenyan Citizen by birth and is entitled to all the rights and benefits under the Constitution of Kenya and all applicable laws.**
- (4) The Registrar General is directed to make the relevant entry in the Adopted Childrens Register.**
- (5) JRNK and MNN are appointed as the legal Guardians for the child.**

DATED IN NAIROBI THIS 19TH DAY OF NOVEMBER 2021.

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MAUREEN A. ODERO

JUDGE