



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO. 6 OF 2018

IN THE MATTER OF THE CHILDREN ACT 8 OF 2001

AND

IN THE MATTER OF ADOPTION OF BABY TO

BY PMM and ANM (APPLICANTS)

RULING

1. The adoption order was sought vide two applications. The first application is brought by way of chamber Summons dated 1.3.2018. The Applicants **PMM & ANM** seek the following orders:

1. **THAT** this court be pleased to appoint **BMM** as Guardian ad Litem in respect of the adoption of the child **BABY TO**.
2. **THAT** this court be pleased to order that the director of Children Services do prepare a home study report for submission to this honorable court.

2. The Second application is brought by way of Ex-parte originating Summons under Section 4 and 154 of the Children Act No 8 of 2001, Section 9 of the Kenya Citizenship and Immigration Act NO 12 of 2011, Section 14 of the Constitution of Kenya 2010 and is dated 1.3.2018. The Applicants seek the following orders:

1. **THAT** the Applicants be authorized to adopt the child **TO**.
2. **THAT** the child be renamed as **EMM**.
3. **THAT** the Registrar General makes the appropriate entries of **EMM** in the Adopted Children Register.
4. **THAT** the child **EMM** be presumed to be a Kenyan Citizen and that the Director of Immigration Services to issue **EMM** with a Kenyan passport.
5. **THAT** **TMK** be appointed Legal Guardian of the child **EMM**.

3. Vide amended ex parte chamber summons dated 29.10.2018, it was sought by the applicants for the following orders:

1. **THAT** the requirements of Section 158(4) (a) of the Children's Act be waived as provided for by Section 159(I) of the Act.
2. **THAT** **BMM** in the said Republic be appointed Guardian ad Litem in this case.
3. **THAT** the Applicants be authorized to adopt baby **TO** and the baby be known as **EMM**.
4. **THAT** **TMM** be appointed Legal Guardian of the child.
5. **THAT** the Director of Children's Department do investigate the case and file a report.
6. **THAT** it is directed that the Registrar-General shall make in the adopted Children's Register an entry recording the adoption in accordance with the particulars set out in the Schedule attached hereto.

4. In the preliminary stage, prayers 2 and 5 of the amended application was allowed by the court.

5. According to a report filed in court on 23.10.2019 by Children Welfare Society of Kenya, the minor was offered for adoption. He was born on 11th March, 2014 at Vihiga District Hospital and birth notification number [particulars withheld] as well as birth certificate serial number [particulars withheld] was issued. The report indicated that his biological parents AA and NO visited the CWSK Vihiga branch and offered the child for adoption as he was born out of incest and that they signed a certificate offering the child for adoption. It was reported that the child was discharged from Vihiga District Hospital and placed at Springs of Life Children Home in Kakamega and being in need of care and protection was committed to the same place. The report indicated that the Children Court in Kakamega vide Care and Protection Case 273 of 2014 issued a committal order on 23rd July, 2014 and that the parents of the child gave consent to adoption of the child in accordance with Section 158(4)(a) of the Children Act, 2001. The report indicated that the child was declared available for adoption and a certificate issued No. 0902 issued which freed the child for adoption. Vide report dated 30th September, 2019 filed by CWSK the applicants are married to each other and opted for adoption as they were unable to have their own child. They were cleared by the police of any criminal records. It was reported that the child was placed with the applicants on 8th October 2014 and resided with him at their home in Kangundo, Machakos and found them suitable as adoptive parents.

6. There was no affidavit in support of the amended application. According to the applicants' joint affidavit dated 15.3.2018 and the statement in support of the application, they had never been convicted of a criminal offence as per the attached police clearance. They sought to adopt the minor whom they have fostered since 9.10.2014 and have not received any form of payment in consideration for the adoption.

7. **BMM** swore an affidavit dated 15.3.2018 to confirm consent to act as Guardian ad Litem.

8. On 30.10.2018 this court directed the Director of Children Services to conduct investigations as to the suitability of the Applicants to adopt **TO-MINOR** and submit a report and findings to court.

9. Francis Kyalo is the Sub-County Children's Officer, Mbooni East. He conducted a Social Inquiry on the Applicants by interrogating them and visiting them at their home on 13.11.2019. It was observed that the applicants were married on 11.12.1999 under the African Christian Marriage Act and that they are able to cater for the needs of the minor. The minor seemed to have bonded well with the applicants and that the conclusion is that the applicants are fit and suitable to adopt **TO-MINOR**.

10. The Sub-County Children's Officer, Mbooni East filed a favourable report dated 20.11.2019 as to the suitability of the Applicants to adopt **TO-MINOR**. **Francis Kyalo** appeared before me on 21.11.2019 to seek that his report where he recommended applicants' application and in respect of a home visit that he undertook confirming the suitability of the applicant to be adopted in the instant proceedings.

11. On 23.10.19, Maureen Maresi appeared in court to recommend the applicants' application and to confirm the suitability of the applicants to adopt the minor as well as adopt the report dated 8.10.2019. **BMM and TMM** appeared before me on 30.10.2018 and 24.1.2019 respectively to confirm and rely on the contents of their affidavits and willingness to take up their duties as well as recommend the applicant to adopt **TO-MINOR**. The applicants also appeared before me on 23.10.2019 and relied on their affidavits to support the application and indicated willingness to adopt and cater for the needs of the minor.

12. This court is satisfied that the Applicants are suitable persons to adopt **TO-MINOR** and that they are financially stable and have the means to provide and care for him. I also find that it is in the best interests of the child to allow the application. The child having been disowned by his biological parents due to the fact that he had been born through an incestuous relationship can only get solace from the applicants herein. The court is satisfied that the parents of the child have given consent to his adoption as per Section 158(4)(a) of the Children Act, 2001 and is unable to waive the requirements of Section 158(4) (a) of the Children's Act for the same is not necessary

For the above reasons the applicants application is allowed in the following terms;

1. **THAT the Applicants be and are hereby authorized to adopt TO-MINOR and the baby be known as EMM.**

2. **THAT TMM be appointed as the Legal Guardian of the child.**

3. **THAT the Registrar-General do make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.**

4. **THAT the Guardian Ad Litem is hereby discharged.**

It is so ordered.

Dated, Signed and delivered at Machakos this 28th day of January, 2020.

D. K. Kemei

Judge