



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MILIMANI

ADOPTION CAUSE NO. 159 OF 2019

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

IN THE MATTER OF BABY S AKA BABY SE DG....1ST APPLICANT

TTJ.....2ND APPLICANT

JUDGMENT

1. DG and TTJ herein referred to as the 1st and 2nd Applicants moved to this court vide an Originating Summons dated 23rd October 2019 pursuant to Sections 158, 159, 160, 163, 164 and 169 of the Children's Act and Sections 1A, 1B and 3A of the Civil Procedure Act seeking orders that;

- a. **They be authorized to adopt Abandoned Baby (S) also known as Baby S also known as S E.**
- b. **The child be presumed to be a Kenyan citizen born on 16th April 2018.**
- c. **Upon adoption, the child be known as ZKG**
- d. **DA be appointed as legal guardian of the child**
- e. **The Registrar General be directed to enter this adoption into the register of adoptions and;**
- f. **A Birth Certificate do issue by the Registrar of Births and Deaths.**

2. Application is supported by a statement of particulars jointly sworn by the applicants on 23rd October 2019, an affidavit of verification sworn by the applicant the same day plus several annexures thereof.

3. The 1st Applicant is a Kenyan citizen by birth while the 2nd Applicant is an Ethiopian by Nationality. They are husband and wife having solemnized their marriage at St. Stephen's Church on 24th July 2010. The 1st Applicant is a [Particulars withheld] ministering at [particulars withheld] Ministries. After working for [particulars withheld] Solutions as a [particulars withheld] Manager from 2014 - 2018, he opted to open his business referred to as [particulars withheld] Shop.

4. On the other hand, the 2nd applicant a trained Accountant and teacher, moved to Kenya the year 2005 to study Evangelism at Nairobi Pentecostal Church and graduated the year 2007 with a Diploma in Theology. It was while at Bible School that the couple met and started cohabiting. After graduating, TTJ left for Ethiopia until 2009 when she returned to Kenya to join DG her sweet heart whom she later married the year 2010. To earn aliving, TTJ engages in businesses such as sale of cereals, coconut oil and olive oil.

5. The couple has been blessed with one biological child one SYG born 25th October 2012. Their motivation to adopt a baby has been propelled by the desire to open their hearts and provide a permanent home to needy children through adoption to fulfil a dream they had conceived prior to their marriage and also to advance God's agenda.

6. Regarding the child SE. presumably born on 14th April 2018, she was found abandoned at Mithahato area by a good samaritan named as JW. The incident was reported at Githunguri Police Station vide O.B No. xx/xx/xx/2018. Later, the minor was taken to Githunguri Health Centre. Thereafter, she was referred to Kiambu Sub-County Hospital where she was admitted in the Nursery on the same day.

7. Subsequently, the matter was reported to the Children Officer's office Githunguri Sub-County who sought a vacancy at Limuru Children Centre for care and protection. The minor was admitted to the said institution on 11th May 2018. Later, the baby was committed formally to the said institution by Githunguri Children's Court on 29th March 2019 vide **Protection and Care Case No. 13/2018**. Despite every effort to trace the parents or close relatives, none could be found. This is evidenced by the police final letter dated 31st January 2019.

8. Consequently, the minor was declared free for adoption by the Kenya Children's Homes Adoption Society during the case committee sitting held on 17th April 2019 and a Freeing Certificate S/No. xxxx issued pursuant to Section 156(1) of the Children's Act. The child was then placed under the care and control of the applicants for the mandatory period of three (3) months continuous care in conformity with Section 157(1) of the Children's Act.

9. Upon filing these adoption proceedings, MK was appointed as guardian ad litem on 30th January 2020 and directions made for the Director Children Services to file his evaluation and assessment report within 45 days.

10. Prior to the hearing, the Director Children Services filed his report dated 9th March 2020. He recommended the adoption stating that the applicants had met the necessary requirements for a local adoption as provided for by the enabling provisions of the Children's Act. He further stated that the applicants had demonstrated their financial capability to take care of the child and that the child had fully bonded with the family.

11. Equally, the guardian ad litem filed her report on 4th March 2020 recommending the adoption. She stated that the applicants are responsible people who have demonstrated their ability to take care of the child and that since placement, the child has been taken care of well. The Kenya Children's Homes adoption society also filed their report on 22nd January 2020 thus recommending the adoption.

12. Due to Corona Pandemic, hearing was conducted virtually on 21st May 2020 with the court dispensing with physical appearance of parties. However, both stake holders, applicants and their counsel addressed the court through skype. The applicants pleaded with the court to allow their application while confirming that they had fully understood the consequences of adoption proceedings and that it was permanent.

13. M/s. K appearing for the applicants submitted that the adoption is for the child's best interests and the same should be allowed.

14. I have considered the application herein, supporting documents and the applicants' sentiments. Issues that crop for determination are: **whether the child is available for adoption; whether the applicants are suitable to adopt the baby and; whether the adoption is in the best interest of the baby.**

15. The baby herein was found by a good Samaritan having been abandoned at a place known as Mithahato area. A report was made to the police vide O.B No. xx/xx/xx/2018 Githunguri Police Station. Despite every effort to trace the relatives, none has come forward to claim the baby. This is confirmed by the police in their initial letter dated 9th May 2018 and final letter dated 31st January 2019.

16. The child having been declared fully for adoption and there being no claim by any relative over the baby for over a period of six (6) months, consent of the biological parents is dispensed with in compliance with Section 159(1) of the Children's Act.

17. Under Section 157 (1) of the Children's Act;

“Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya.”

This provision is further amplified by Article 14(4) of the Constitution which presumes a child found in Kenya who is, or appears to be, less than 8 years of age, and whose nationality and parents are not known, to be a Kenyan Citizen by birth.

18. The child was found abandoned and at that time, she was below 8 years. Constitutionally, she is deemed to be a Kenyan and therefore available for adoption in conformity with Section 157(1) above stated.

19. Regarding the suitability of the adoptive parents to adopt the baby, they are husband and wife aged above 25 years and below 65 years thus complying with Section 158(1) of the children's Act. They are Kenyan citizens who have been assessed by all stakeholders who found them to be suitable financially, spiritually, medically, physically, emotionally, mentally and free from any criminal record. They were described as responsible parents staying on a two bedroomed home in a middle class estate at Ongata Rongai. Their combined source of income is estimated to be about Kshs. 56,000 with a net of Kshs. 34,000/-.

20. Although the 2nd applicant is an Ethiopian National, she has been a resident in Kenya for over ten (10) years now and she has no other matrimonial home other than the one in Kenya. Although the second applicant could fall in the category of a foreigner pursuant to the 27th November 2014 moratorium imposed by the Cabinet, the circumstances of this case can be distinguished from that of an international adoption which targets the mischief of child trafficking. Courts have since taken into consideration the merits of each case and the best interests of a child as the guiding factors (see **J.M (minor) (2018) eKLR, I. J. (Minor) (2015) eKLR and CC (child) (2017)eKLR**).

21. The applicants clearly confirmed that they understand the consequences of adoption and that it is permanent. They have fully bonded with the baby and the worst this court can do is to reject the application and separate the child from them. Accordingly, I am satisfied that the applicants are suitable to adopt the baby having met the necessary legal requirements.

22. Whether the adoption is in the best interest of the child, the same is obvious from the face of the record. The baby was found abandoned. Nobody has come forward to claim her. The applicants have taken up parental responsibility over the baby since placement who now enjoys good shelter, clothing, medical care, education, food, parental guidance, emotional and psychological support.

23. Basically, the child is comfortable with hope for a bright future and a possibility of having something to inherit. She is going to enjoy mentorship and acquire generational identity.

24. It is trite that consideration of the best interests of a child is the cardinal principle which must be taken into account before anybody, institution or court can make a decision affecting a minor (see Article 53(2) of the Constitution and Section 4(2) and (3) of the Children's Act). In the circumstances of this case, it is my finding that the adoption herein will best serve the interests of the minor. Accordingly, the application is allowed with orders that:-

- a. The applicants are hereby authorized to adopt abandoned baby (S) also known as Baby S also known as SE who henceforth shall be known as ZKG.**
- b. That the child's date of birth shall be 16th April 2018 and place of birth Githunguri Kiambu County Kenya.**
- c. The child be and is hereby deemed to be a Kenyan citizen by birth.**
- d. The consent of her biological parents or guardians be and is hereby dispensed with.**
- e. The Registrar General be and is hereby directed to enter the adoption herein in the adopted children's register.**
- f. The Registrar of Births and Deaths be and is hereby directed to issue a Birth Certificate to the minor.**
- g. The Guardian ad litem is hereby discharged.**
- h. DA sister to the second applicant is hereby appointed as the legal guardian to the baby in the event of any eventuality befalling the applicants.**

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF MAY, 2020.

.....

J. N. ONYIEGO(JUDGE)