



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MILIMANI

ADOPTION CAUSE NO. 99 OF 2019

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

IN THE MATTER OF BABY H. N.

J. M. N.....1ST APPLICANT

S.W.K.....2ND APPLICANT

JUDGMENT

1. On 18th July 2019, JMN and SWK hereinafter referred to as the 1st and 2nd Applicants respectively, moved this court vide an Originating Summons dated 16th July 2019 seeking;

(a) That they be authorized to adopt baby HN and that the said child be known as AW.

(b) That the child having been found abandoned at Kabiria area Dagoretti in Nairobi City County be presumed to be a Kenyan citizen born on 25th September 2017 in Nairobi City County.

(c) That AKK and AWK of Post Office Box Number 389-01030 Gatundu be appointed legal guardians to the child in the event a misfortune befalls the applicants.

(d) That the consent of the biological parents be dispensed with.

(e) That the Registrar General makes the appropriate entries into the Adopted Children Register.

2. The application is grounded upon a joint statement in support of an application for an adoption order dated 16th July 2019 and an affidavit jointly sworn by the applicants on the same day.

3. The applicants are Kenyan citizens by birth aged 52 and 46 respectively. They are husband and wife having been married under Kikuyu Customary law and thereafter solemnized the same at the Registrar of Marriages Nairobi on 18th September 2013. They have been blessed with one child by the name of AGM born on 2nd November 1998. Professionally, the first applicant is a nurse currently working at [Particulars Withheld] Hospital in the U.S.A where he is serving as a Unit Supervisor. The 2nd applicant is a teacher by training and currently teaching at [Particulars Withheld] Primary School.

4. The motivation to adopt the minor herein has been propelled by their Love towards children; desire to give a needy child a better life and a future and also, the need to grow their family.

5. Regarding the status of the minor the subject of these proceedings, she is presumed to have been born on 25th September 2017. She was found by a good samaritan having been abandoned in a bush at a place known as Kabiria. The incident was reported at Riruta Police Station on 26th September 2017 under O.B No. 22/26/1/2017. The subject was temporarily placed at New Life Home Trust for protection and care pending investigations as to the whereabouts of her parents. Subsequently, the Children Officer Dagoretti Sub-County moved to Milimani Children's Court and obtained a formal committal court order dated 5th August 2018 vide Protection and Care Case No. 446/18 committing the child to New Life Home Trust Kilimani for a period of 3 years.

6. Despite every effort as demonstrated by the police initial and final letters dated 26th September 2017 and 3rd September 2018 respectively,

nobody has laid claim over the child. Consequently, upon expiry of six months, the adoption process commenced with Little Angels Network Adoption Society holding its case committee on 9th March 2018 declaring the child free for adoption. As a result, a declaration certificate S/No. [...]dated 10th September 2018 was issued and the child placed in the hands of the applicants for the mandatory three consecutive months care and control on 27th September 2018.

7. Having completed preliminary process preceding institution of these adoption proceedings, the applicant sought the appointment of CWK as guardian ad litem. On 26th September, 2019 the proposed guardian was appointed and the Director Children Services directed to file an evaluation and assessment report within 45 days.

8. Prior to the hearing, the Director Children Services filed his assessment report dated 31st October 2019 prepared by Mary Atati Principle Children's Officer thus recommending the adoption. Equally, the guardian ad litem and Little Angels Network Adoption Society filed their respective reports on 31st October 2019 and 10th September 2018 also recommending the adoption. Both reports described the applicants as responsible and economically stable people, Christians with no criminal record, medically, mentally, physically, morally and socially fit to adopt the baby. Consent by the applicants' biological son one A was filed as part of the record.

9. Due to Corona Pandemic, hearing proceedings were conducted virtually. Since there was no objection recorded during the hearing of the application for appointment of guardian when both parties and the minor appeared, the court in compliance with previously issued Practice Directions by the Presiding Judge Family Division dispensed with the physical attendance or appearance of the parties.

10. From the applicants' statement and affidavit in support of the application, and further from their counsel's submissions, it is clear that the applicants do understand the consequences of these adoption proceedings and that once the orders sought are granted, the same shall be permanent.

11. I have considered the application herein, various stake holders' reports and counsel's submissions. Issues that arise for determination are:-

(a) whether the child is suitable for adoption.

(b) whether the applicants have met the criteria to adopt the child.

(c) whether the adoption is in the best interest of the child.

12. The minor herein was found having been abandoned inside a bush. A good Samaritan one Wanjiku reported the incident to Riruta Police Station. As confirmed by the police initial and final letters aforementioned, nobody has come forward to claim the baby. It then follows that consent from the parents or any close relatives is not applicable in the circumstances of this case.

13. Pursuant to 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. By dint of this constitutional provision, the subject herein is deemed to be a Kenyan citizen.

14. Further, Section 157(1) of the Children's Act does provide that:-

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

The minor is 18 years and above six (6) weeks the requisite age bracket recommended for a child to be adopted. She has been declared free for adoption and has been under the applicants' care and control for three consecutive months in compliance with Section 157(1) of the Children's Act.

15. As there is nobody laying claim over the baby, the requirement for consent is hereby dispensed with pursuant to Section 159(1) of the Children's Act. In view of the above consideration, it is my finding that the child is available and suitable for adoption.

16. Concerning the applicants' suitability, they are both Kenyans who have been assessed by all stake holders and found to be suitable. They are aged 52 and 46 years respectively thus satisfying the age requirement of not being less than 25 years or more than 65 years pursuant to Section 158 of the Children's Act. They are economically stable with a combined monthly salary and rental income totaling to about Kshs. 245,000/-. They stay in a five bedroomed house within [Particulars Withheld] Estate thus providing conducive environment for growth of the child.

17. They are Christians with no criminal record, mentally, spiritually, physically and socially fit, understands the consequences of this adoption proceedings and have fully bonded with the baby. This being a local adoption, I am satisfied that the applicants have met the requisite requirements to adopt the baby herein.

18. As to whether the adoption is in the best interests of the baby, the cardinal requirement enshrined under Article 53(2) of the Constitution and Section 4(2) and (3) of the Children's Act is the consideration of the best interests of a child before making any decision affecting the affairs of a child. Considering that the minor was abandoned and has no known relative/s, it will be in her best interest that she gets a home and parents she can refer to as father and mom.

19. The applicants have been declared suitable and capable of providing shelter, education, medical care, food, clothing and all other basic requirements attributable to comfortable growth and development of a child. There is no doubt in my mind that the applicants have met the requisite requirements to adopt the baby and that the adoption is ultimately in the best interests of the child.

20. Accordingly, the application is allowed with orders as follows:-

(a) That the applicants be and are hereby authorized to adopt baby HN who henceforth shall be known as A W.

(b) That the child is presumed to be a Kenyan citizen whose date of birth shall be 26th September 2017 and place of birth Riruta Nairobi County, Kenya.

(c) That consent of the biological parents is dispensed with.

(d) That the Registrar General is directed to enter the adoption order herein into the Adopted Children's Register.

(e) That the guardian ad litem is hereby discharged.

(f) That AKK and AWK be and are hereby appointed as legal guardians to the minor in the event of death or any eventuality befalling the applicants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF JUNE 2020.

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J. N. ONYIEGO

JUDGE