



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY AND PROBATE DIVISION

ADOPTION CAUSE NO. 130 OF 2018

IN THE MATTER OF THE CHILDREN ACT (ACT NO. 8 OF 2001)

AND

IN THE MATTER OF BABY VB ALIAS ABANDONED INFANT(MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

PKK & JMK (APPLICANTS)

JUDGMENT

Background:

1. The applicants **PKK & JMK** are husband and wife having solemnised their marriage on the 21st of December 1996. The couple are aged 52 and 48 respectively.
2. On the 6th of February 2016 the female applicant found the minor abandoned and wrapped in a polythene bag outside the applicants' residence in Utawala, Nairobi. She reported the incident at Savanna Police Post under Police reference XXX. The child was thereafter taken to Mama Lucy Hospital for observation and medical care, he was admitted at the said hospital until the 29th of February 2016 when he was taken to Imani Children's Home for care and protection. And on the 16th of August 2016 he was formally committed to the said home through the Children's Court. In a letter dated the 20th of September, 2016 the Savanna Police Post confirmed that no person had claimed the child and efforts to trace the parents did not yield any results.
3. It is not clear from the documents filed before court the manner in which the applicants expressed their interest in adopting the child, however the child was placed with them since the 13th of February 2017, having been declared free for adoption by Buckner Kenya Adoption Society on the 28th of October 2016.
4. Now before court is an application for adoption of **Baby VB** by way of an Originating Summons dated the 14th of August, 2018, brought pursuant to **Sections 158, 159, 160, 164 & 170** of the Children's Act. The Applicants seek for orders to adopt the minor and upon such adoption the child be known as **PWK**; that **JMK** be appointed as a legal guardian of the child in the event the applicants are incapacitated or are no more and the child still unable to fend for herself, further for the Registrar General do make appropriate entries in the Adoption Register.
5. Pursuant to a Chamber Summons dated 14th August 2018 on the 8th day of November, 2018, the court appointed **Kyalo Muthiani** as a guardian *ad litem*, who by law is required to safeguard the interest of the minor as these proceedings are ongoing, investigate and report the circumstances pertinent to the adoption, intervene on behalf of the child should a need arise, make recommendations towards the adoption and undertake any other task the court may require.
6. On the said date the court also directed the Director of the Children's Services Department in Nairobi and the said guardian *ad litem* to

investigate the Applicants' fitness to adopt and file their respective reports.

Reports:

7. Director of Children's Service Report

The report is dated 21st of June, 2019. The report gives a detailed report of the applicants' background. The 1st applicant is a pastor with [particulars withheld], whereas the 2nd applicant is employed as an [particulars withheld]. The applicants reside in a three bedroomed house at [particulars withheld], in Nairobi, where seven members of the family including the applicants' three biological children, a niece of the 1st applicant and the minor reside. The applicants having rescued the child appear to have developed some attachment to him and jointly felt that they need to adopt him so that they may acquire parental rights over the child. Their three children are in agreement and have consented to the adoption.

The director upon investigations highly recommended the adoption.

Guardian Ad litem's Report:

8. The Guardian *ad litem* filed a report on 24th October, 2019, which gives details similar to the Director of Children's Services report. He went further to state that the applicants appreciate as parents of three daughters the need for a child to have a stable home and a family and hence their decision for this adoption. The guardian observed that the child is happy and well taken care of by the adoptive parents, gets on well with the other children and has bonded very well with the entire family. It is his view that the adoption is for the best interest of the child.

9. The court finds that the applicants have met all the necessary requirements of the law, and coupled with the above information by the Director of Children's Services and the guardian *ad litem*, the court has formed the opinion that the adoption will be in the best interest of the child.

10. The court also finds it necessary to draw the applicants' attention to the fact that as they acquire parental responsibility over the child the child at the same time will have rights as their other children under the law including the right of inheritance from his new parents.

11. As for the proposed legal guardian, as his wife has consented to the responsibility and has informed the court that she will support the husband, the court has found it necessary to enjoin her as a co-guardian.

12. Consequently, the court orders as follows:

- i) **PKK & JMK** be and are hereby authorised to adopt **BABY VB**.
- ii) The child upon this adoption will be known as **PWK**
- iii) The Registrar General do register the adoption and issue a certificate.
- iv) **JMK & HKP** be and are hereby appointed as the Legal Guardians to **PWK**
- v) The guardian *ad litem* **KYALLO MUTHIANI** is hereby discharge from the obligation earlier bestowed upon him by the court.

SIGNED DATED and DELIVERED in open court this 11th day of June 2020.

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ALI-ARONI

JUDGE