



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 166 OF 2019 (O.S)

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

AND

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY PW ALIAS EZ ALIAS ABANDONED CHILD

BY

ANK AND RWK (APPLICANTS)

JUDGMENT

1. The Applicants ANK and RWK are in a monogamous marriage which was solemnized at (Particulars Withheld) in Laikipia County on 25th November, 2006. A copy of a Certificate of Marriage of serial number [xxxx] is on record. They have no biological child of their own but had previously adopted a female child known as MGN. A copy of the adoption order is on record. They wish to adopt the female child known as Baby PW alias EZ alias Abandoned Child through the Originating Summons dated 27th November, 2019.
2. From the pleadings, the court gathers that the male applicant is a Call Centre (Particulars Withheld) whereas the female applicant is a (particulars withheld) Kenya Limited. They reside in a four-bedroom house in (Particulars Withheld) and both profess the Christian faith.
3. Records indicate that the minor in this matter was abandoned by her mother shortly after birth at the Naivasha County Referral Hospital. The hospital reported the matter to Naivasha Police Station where it was booked vide OB. No. [xxxx]. The matter was also reported to the Children's Department, Naivasha Sub-County which sought and obtained temporary placement of the child at Neema House Infant Rescue Centre. On 31st January, 2018 she was committed to the care and custody of the Rescue Centre by the Children's Court at Naivasha vide P&C Case No. [xxxx].
4. The Officer Commanding Naivasha Police Station issued a letter dated 21st March, 2018 in which he stated that attempts to trace the child's kin had borne no fruits. He recommended any appropriate action to ensure the best interest and well-being of the child. On 13th April, 2018 the Applicants took the child into foster care with a view of adopting upon signing a Care Agreement. Since then the child has been in the continuous care and custody of the Applicants.
5. Change Trust Adoption Agency prepared and filed a report dated 12th April, 2018. They had also issued a Certificate of Serial No. [xxxx] dated 12th April, 2018 declaring the child free for adoption. The guardian ad litem SMM filed a report dated 13th July, 2020 which was favorable and recommended the adoption of the child by the Applicants.
6. An officer from the office of the Director of Children Services conducted home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child. He filed a report dated 12th June, 2020 recommending the adoption for reasons that the child stands to gain by becoming the daughter of the Applicants as opposed to living all her life in an institution as an abandoned child.
7. He stated that the Applicants have met all the requirements for a local adoption as provided in the statute and that the minor is thriving well in the family.
8. The orders sought by the Applicants herein relate to a child. In law, in any matter concerning a child, the best interest of the child is what is of paramount importance as provided for under **Article 53(2)** of the **Constitution** and amplified by **section 4(3)** of the **Children Act No. 8 of 2001**.
9. This is a local adoption and the Applicants, in my opinion, have fulfilled the requirements for a local adoption under the **Children Act**. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this

matter. I am convinced that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought.

10. The consent of the biological parents was dispensed with since the child was abandoned at infancy and the parents could not be traced to give the consent. The Applicants' family members are aware of the proposed adoption and support it.

11. NMK, a brother to the male applicant, and his wife SNK have by a joint Guardians' Letter of Consent dated 5th October, 2019 consented to be appointed as the legal guardians in the event that the Applicants are incapacitated and cannot care for the child.

12. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicants and the child during the virtual hearing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Not only does the child gain a warm and loving family, she also gains the added advantage of a sibling.

13. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 27th November, 2019 and order as follows:

i. The Applicants ANK and RWK be and are hereby allowed to adopt **Baby PW alias EZ alias Abandoned Child** who shall henceforth be known as **ZWN**.

ii. Her date of birth shall be 24th August, 2017. She is presumed to have been born in Kenya in accordance with **Article 14(4)** of the **Constitution**, and the place of birth shall be Naivasha County Referral Hospital.

iii. NMK and SNK are hereby appointed as the legal guardians of the child in the event that the Applicants die, or are incapacitated by ill-health.

iv. The Registrar General is directed to enter this order in the Adoption Register.

v. The Director of Immigration is hereby authorized to issue the child with a Kenyan passport.

vi. The guardian ad litem is hereby discharged.

It is so ordered.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 17TH DAY OF SEPTEMBER, 2020.

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L. A. ACHODE

HIGH COURT JUDGE