



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

FAMILY DIVISION

ADOPTION CAUSE NO.5 OF 2019

IN THE MATTER OF MK AND JM (MINOR)

BNN

AL.....APPLICANTS

JUDGMENT

1. The applicants lodged an Originating Summons dated 20.03.2019 brought under section 157 (1) and 158(1) of the Children's Act and Rule 4 and 14 of the Adoption Rules and seeking for orders that

1. That the consent of the infant's natural parents be dispensed with
2. That the applicants be authorized to adopt MK and JM both infants.

The guardian ad litem was appointed on 14/10/2019

2. The application was supported by the applicants' joint affidavit wherein they adopted their statement in support of the application. In a nutshell, it was the applicant's deposition that JM and MK the minors herein were born on 15.12.2010 and 15.02.2012 respectively and to unidentified mothers. Further that they were both found abandoned in Meru town and in a coffee plantation in [particulars withheld] village respectively and committed to Embu Children's Home for safe custody and care and that the applicants had stable income hence able to provide the minor with stable family environment. A copy of a certificate of marriage and copies of their National Identity cards were annexed to the application. The applicants further deposed the infants herein were received in their care and possession on or about 28.08.2013 and that the couple had completed the necessary forms with Ripples International which home had no objection to the adoption.

3. The Adoption Society- Ripples International in their report dated 12.11.2017 for MK and one dated 14.11.2017 for JM recommended that the minors are available for adoption and that adoption would be for the best interest of the minor. Certificates to declare the infants free for adoption were attached to the said reports. The Proposed guardian *ad-litem* further filed a Report dated 8.11.2019 recommending the adoption.

4. From the foregoing, the issue for determination is whether the Applicants have made a case for grant of the orders sought.

5. The power to make an adoption order is bestowed upon this court by virtue of section 154(1) of the Children's Act.

6. Section 156 of the Children's Act requires that for any arrangement to be commenced for the adoption of a child, the said child should be at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with this rules prescribed in that behalf.

7. Section 157 further provides that 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. However there is a proviso under the said section that no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants, as the case may be evaluated and assessed by a registered adoption society in Kenya.

8. Section 158(1) further requires that in an application for adoption and where there is joint application (as it is in this case), at least one of the joint applicants must have attained the age of twenty-five years and at least twenty-one years older than the child but has not attained the age of sixty-five years; or (b) is a relative of the child; or (c) is the mother or father of the child. Section 158 (2)-(4) further provides for further conditions which applicants ought to comply with in filing the application for adoption. Amongst those conditions is the consent by

the parent. However, section 159 gives this court the powers to dispense with the said consent in the case of the parents or guardian of the child, that he has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child.

9. From the consent to an adoption order in respect of the minors herein by Sr. Teresia Wanjiku Mburu, the Administrator of D.O.E Embu Children's Home and the applicants' statement in support of the application for the adoption orders herein, it is clear that JM and MK were born on 15.12.2010 and 15.02.2012 respectively. As such, at the time of the application, the infants were more than six (6) weeks old. Minors have been declared free for adoption by Ripples International in the report dated 12.11.2017 for MK and one dated 14.11.2017 for JM. The applicants deposed to the effect that the infants were received in their care and possession on or about 28.08.2013 and thus they had been in the continuous care and control of the applicants for a period of three consecutive months preceding the filing of the application. The applicants annexed to the application copies of their national identity cards and wherein it was indicated that they were born in 1967 and 1969 respectively and thus both of them had attained the age of twenty-five years and at least twenty-one years older than the infants. The applicants in this case have not attained the age of sixty-five years. The record shows that JM was found abandoned in Meru town while MK was found abandoned in a coffee plantation in [particulars withheld] village and their mothers were not traced. As such, the consent by the parent is hereby dispensed with by virtue of section 159.

10. It is my considered opinion that the foregoing facts demonstrate that the applicants have made a case for the issuance of the orders sought.

11. I find the application merited and grant orders in terms of prayers 2 and 3 of the Originating Summons.

12. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF NOVEMBER, 2020.

F. MUCHEMI

JUDGE