



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 142 OF 2019

IN THE MATTER OF THE CHILDREN,S ACT 2001

IN THE MATTR OF BABY K AKA BABY G AKA UNKNOWN

BABY BOY AKA ABANDONED BABY BOY (THE CHILD)

AND

IN THE MATTR OF AN APPLICATION FOR ADOPTION BY AA& SAK

ORIGINATING SUMMONS

(Under Sections 158, 159, 160, 163, 164 and 169 of the Children’s Act Ca[141 , Laws of Kenya and

Section 1A, 1B and 3A of the Civil Procedure Act Chapter 21 Laws of Kenya

JUDGMENT

By an Originating Summons dated 13th September 2019 and filed in court on 23rd October 2019, AA and SAK, Applicants, have come to this court seeking the following orders:

1. THAT the Applicants be authorized to adopt the child: BABY K AKA BABY G AKA UNKNOWN BABY BOY AKA ABANDONED BABY BOY who is presumed to be a Kenya citizen, born on 28th day of July 2018.
2. THAT upon adoption, the child be known as KS.
3. THAT MAA of Kenya National Identity Card Number [xxxx] be appointed as legal guardian of the child: BABY K AKA BABY G AKA UNKNOWN BABY BOY AKA ABANDONED BABY BOY.
4. THAT the Registrar General be directed to enter this adoption into the Register of Adoption and a subsequent Birth Certificate do issue by the Registrar of Births and Deaths.

The Applicants have attached to the Originating Summons their statements in support. In their statements, the Applicants are telling the court that they are fit to adopt the child and ask the court to grant the prayers they are seeking. Ms G in her brief submissions made in court during virtual hearing of this matter told the court that she wholly relies on the statements of the Applicants and all the annexures. She asked the court to take into consideration the reports by the Department of Children Services dated 10th March 2020 and that by Guardian Ad Litem dated 1st March 2020. By orders of this court issued on 30th January 2020, MKK was appointed Guardian Ad Litem.

I have read the Originating Summons and the Statement of the Applicants in support of the Summons. The pleadings show that AA and SAK, the applicants herein, are husband and wife. They solemnized their marriage under Islamic Law. They have attached certificate of marriage dated 24th June 2012 (marked “AAS 2”). Both are Kenyan citizens. A was born in 1978 and S was born in 1965. This makes them over 25 years older than the child fulfilling the requirements of Section 158 of the Children’s Act. A operates Neema [particulars withheld] Estate Nairobi while S is employed at [particulars withheld] as a Machine Operator. They have attached S payslips and bank statements as proof that they are financially capable of taking care of the child.

From the report of the Kenya Children’s Homes dated 12th November 2019, the child is presumed to have been born on 28th July 2018. He

was found abandoned at Kaloleni Estate Nairobi by one Joseph Githinji of telephone number 072xxxx and taken to the area Chief of Makongeni Location who involved Volunteer children officers Caleb Ouma and Mary Mbusa. The two reported the matter at Makongeni Police Station vide OB No.38/29/7/2018. The two volunteer children's officers also sought vacancy at Thomas Barnado House where the child was admitted on 30th July 2018. The child was finally committed at Thomas Banardo House for care and protection by the order of the Children's Court in Case No. 266 of 2019 dated 6th March 2019. The parents or guardians of the child were not traced and through a letter from Makongeni Police Station dated 28th February 2019 no one went to the Station to claim the child. Their consent could therefore not be obtained.

The child was freed for adoption by the Kenya Children's Home vide a certificate to that effect dated 17th April 2019 and thereafter placed under the care of the Applicants on the 26th April 2019 following an agreement between Thomas Barnado House and the Applicants. The Applicants have two other children born of SAK and one AN namely FAS born on 13th August 1993 and NM born on 15th December 1999 both of whom have given consent to the Applicants to adopt the child through their respective affidavits filed in court on 5th November 2019. In the course of writing this judgment I noticed some anomalies in respect of the reference to the Applicants as being childless. This however was addressed through additional reports from the Guardian Ad Litem, the Department of Children's Services and the Applicants. It is now clear to this court that the two Applicants do not have biological children together but are father and step mother of F and N. The Report of the Guardian Ad Litem pursuant to the orders of this court dated 10th December 2020 show that SAK and AN are divorced since January 2012.

I have considered all the reports by the Kenya Children's Homes, by the Director of Children's Services and by the Guardian Ad Litem. All the reports are favourable and recommend that the Applicants are suitable to adopt the child. I have also confirmed that this process culminating in the matter before me was done in complete obedience to the law. With the clarification this court sought having been provided, it is my considered view that the Applicants, AA and SAK have satisfied this court that they are fit to adopt the child. It is my finding that all the prerequisites set out for adopting a child under the law have been met. It is my finding, further, that it is in the best interest of the child to grant the orders sought by the Applicants in their Originating Summons dated 13th September 2019.

Consequently, I allow the prayers sought in the Originating Summons dated 13th September 2019 and issue an adoption order in the following terms:

- 1. THAT AA and SAK are hereby authorized to adopt the child: BABY K AKA BABY GIFT AKA UNKNOWN BABY BOY AKA ABANDONED BABY BOY.**
- 2. THAT BABY K AKA BABY G AKA UNKNOWN BABY BOY AKA ABANDONED BABY BOY shall be known as KS.**
- 3. THAT BABY KS shall be presumed to be a Kenyan Citizen.**
- 4. THAT BABY KS shall be presumed to have been born on 28th July 2018.**
- 5. THAT MAA of Kenyan National Identity Card Number [xxxx] is hereby appointed as Legal Guardian of BABY KS.**
- 6. THAT the Registrar General is hereby directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate shall issue by the Registrar of Births and Deaths.**
- 7. THAT MKK is hereby discharged from being Guardian Ad Litem of BABY KS.**

Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF DECEMBER 2020.

S. N. MUTUKU

JUDGE