



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ADOPTION CAUSE NO. 62 OF 2018 (O.S)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY NK
BY
MNM AND HMN (APPLICANTS)
JUDGMENT

1. The Applicants MNM and HMN are in a monogamous marriage which was solemnized at the [particulars withheld] in Kiambu on 4th April, 1998. They have no children of their own but have previously adopted two children. The male applicant, who was a widower at the time of the marriage, has nine (9) children from his first marriage, all of whom are adults. They wish to adopt the male child known as Baby NK, through the Originating Summons dated 15th May, 2018.
2. From the pleadings the court gathers that the male applicant is a business man whereas the female applicant is a retired teacher cum farmer. They reside in [particulars withheld] Village in Magumu, Nyandarua County and both profess the Christian faith.
3. Records indicate that the minor in this matter was abandoned by an unknown person within Nakuru town on 30th December, 2009. He was referred to the Springs of Hope Orphanage by the Children's department Nakuru. He was committed to the home on vide a P& C Case No. 442/2009. The matter was reported to Nakuru Central Police Station where it was booked via OB No. 24/11/10/2012.
4. The Police at Nakuru confirmed vide a letter of 9th May, 2013 and a follow up letter of 30th June, 2014 that no one had come forward to claim the child. On 2nd December, 2015 the Applicants took the child into foster care with a view of adopting. A foster care agreement was signed on 2nd December, 2015.
5. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated 5th July, 2018. They had also issued a certificate of serial no. [particulars withheld] dated 12th August, 2016 declaring the child free for adoption. The guardian ad litem MWM filed a report which was favourable 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. She filed a report on 20th November, 2018 recommending the adoption for reasons that the child stands to gain by becoming the son of the Applicants as opposed to living all his life in an institution as an abandoned child. She stated that they have complied with all the legal requirements but pointed out that one of the Applicants is above the recommended age of 65 years and below. The Applicants have adopted two other children who are thriving well in the family and this will give the minor the added advantage of siblings.
7. SNN, a son to the male Applicant, has consented to be appointed as the legal guardian in the event that the Applicants are incapacitated and cannot care for the child.
8. The orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child's best interests are of paramount importance in every matter concerning the child.”

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof which amplifies this principle.

9. This is a local adoption and from the record the Applicants have fulfilled all the legal requirements relating to the adoption of the child. The consent of the biological parents was dispensed with since the child was abandoned and the parents could not be traced to give the consent. The child was in court during the hearing. The Applicants' family members are said to be aware of the proposed adoption and support it.

10. Whereas the male applicant is aged 82 years, I note that this is not an impediment to the grant of the adoption orders since the female applicant is aged 61 years. It is sufficient if one of the joint applicants meets the requirements of **Section 158(1)(a)** of the **Children Act**, which provides *inter alia* that an adoption order may be made where the applicant or at least one of the joint applicants has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years. In the instance case, the female applicant who is aged 61 years meets all the stated requirements.

11. From the foregoing, this court is of the considered view that it is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 15th May, 2018 and order as follows:

- i. The Applicants, MNM and HMN be and are hereby allowed to adopt **Baby NK** who shall henceforth be known as **NM**.
- ii. His date of birth shall be presumed to be 30th December, 2007. He is presumed to have been born in Kenya in accordance with **Article 14(4)** of the **Constitution**, and the place of birth shall be Nakuru.
- iii. SNN is hereby appointed as the legal guardian 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 authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and **DELIVERED** in open court this **24th** day of **January, 2019**.

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L. A. ACHODE

HIGH COURT JUDGE