



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 63 OF 2015

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

IN THE MATTER OF ADOPTION OF BK AKA BKK

BY

PKK AND JNK (APPLICANTS)

JUDGMENT

1. The Applicants PKK and JNK are in a monogamous marriage under Kikuyu customary law since 1996. They had no child of their own before the placement of the minor with them but have since adopted a female child known as TNK and been blessed with triplets. They wish to adopt the male child known as BK aka BKK, through the Originating Summons dated 3rd March, 2015.
2. From the pleadings the court gathers that the 1st Applicant, PKK is an accountant at [Particular withheld] and the 2nd Applicant JNK, is a businesswoman. They reside in a four bedroom house in [Particulars withheld] Estate off Kenyatta Road in Juja and are both Roman Catholics.
3. Records indicate that the minor in this matter was abandoned within Makongeni area on 17th May, 2010. The matter was reported at Buruburu Police Station where it was booked via OB No. [Particulars withheld]. The child was taken to Pumwani Maternity Hospital for check-up and referred to Imani Children's Home. He was committed to the home on 27th July, 2011 by the Children's Court at Nairobi vide P&C Case No. 270/2011.
4. The police at Buruburu Police Station confirmed vide a letter of 23rd June, 2011 that the biological parents of the child were not traced, nor had anyone come forward to claim the child. On 15th October, 2011 the Applicants took the child into foster care with a view of adopting. A foster care agreement was signed on 15th October, 2011.
5. Prior to the hearing of the adoption application, Children Welfare Society of Kenya prepared and filed a report in court. They had also issued a certificate of serial no. [Particulars withheld] dated 23rd May, 2014 declaring the child free for adoption. The guardian ad litem BMM filed a report dated 7th July, 2015 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. She filed a report dated 9th April, 2018 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the son of the Applicants as opposed to living all his life in an institution as an abandoned child. The Applicants appear to be a warm family and will also give him the added advantage of siblings.
7. The child was in court during the hearing and appeared to have bonded well with the Applicants. He was jovial and clearly seemed to trust the Applicants and regarded them as his parents. The Applicants' family members are aware of the proposed adoption and support it.
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 the Applicants, in my opinion have fulfilled the requirements for a local adoption under the **Children Act, 2001**. 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. The consent of the child's biological parents was dispensed with since the child was abandoned and the parents could not be traced to give the consent.

10. Secondly, 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.

11. From the foregoing, this court has formed the opinion 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 3rd March, 2015 and orders as follows:

- i. The Applicants, PKK and JNK are hereby allowed to adopt **BK Aka BKK** who shall henceforth be known as **BKK**.
- ii. His date of birth shall be presumed to be 1st March, 2010. 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 Makongeni area in Nairobi.
- iii. KMC (a sister to the female applicant) is hereby appointed 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 **21st** day of **February, 2019**.

.....

L. A. ACHODE

HIGH COURT JUDGE