



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 120 OF 2018 (O.S)**

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

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY CM AKA BABY G.**

**BY**

**NKK AND JCWK (APPLICANTS)**

**JUDGMENT**

1. The Applicants NKK and JCWK are in a monogamous marriage which was solemnized at the [Particulars withheld] High School in Nairobi on 29<sup>th</sup> November, 2003. They have no child of their own. They wish to adopt the male child known as Baby KM through the Originating Summons dated 6<sup>th</sup> August, 2018.
2. From the pleadings, the court gathers that both Applicants are Pastors currently serving at the [Particulars withheld], Ngong Road within Nairobi County. They reside in a three (3) bedroom duplex apartment at Gitanga road in Lavington area, Nairobi. Both profess the Christian faith.
3. Records before the court indicate that the minor in this matter was found abandoned along the road near [particulars withheld] School in Rabuor area, Kisumu on 24<sup>th</sup> April, 2017. The minor was abandoned together with his twin brother Baby B aka KM whom the Applicants herein also seek to adopt. The matter was reported to Rabuor Police Station where it was referred to Kisumu (Central) Police Station where it was booked vide OB No. [Particulars withheld].
4. On 24<sup>th</sup> April, 2017 the child was committed to the care of New Life Home Trust by the Children's court at Ahero vide P&C Case No. 58/2017. The Kisumu (Central) Police Station issued a final letter dated 19<sup>th</sup> March, 2018 in which they confirmed that efforts to trace the biological parents of the child proved futile neither did anyone come forward to claim the child. On 12<sup>th</sup> April, 2018 the Applicants took the child into foster care with a view of adopting. A foster care agreement was duly signed on 12<sup>th</sup> April, 2018.
5. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated 24<sup>th</sup> October, 2018. They had also issued a Certificate of Serial No. xxxx dated 29<sup>th</sup> March, 2018 declaring the child free for adoption. The guardian ad litem SM filed a report dated 27<sup>th</sup> February, 2019 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 dated 14<sup>th</sup> December, 2018 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the son of the Applicants and that the Applicants have fulfilled all the statutory requirements.
7. The orders sought by the Applicants herein 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.

8. 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. 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.

9. 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.

10. 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. 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 he gain a loving family, but the adoption will also allow him to stay together with his twin brother whom the Applicants also seek to adopt.

11. AKG and HWK, a married couple who are friends to the Applicants, by a joint affidavit sworn on 6<sup>th</sup> August, 2018 consented to be appointed legal guardians in the event that the Applicants are incapacitated and cannot care for the child.

12. 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 6<sup>th</sup> August, 2018 and order as follows:

- i. The Applicants, NKK and JCWK be and are hereby allowed to adopt **Baby CM aka Baby G** who shall henceforth be known as **DMK**.
- ii. His date of birth shall be presumed to be 28<sup>th</sup> October, 2016. 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 Kisumu.
- iii. AKG and HWK 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 Adopted Children 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.

**SIGNED DATED and DELIVERED** in open court this **28<sup>th</sup> day** of **March 2019**.

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**L. A. ACHODE**

**HIGH COURT JUDGE**