



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 60 OF 2017 (O.S)

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

IN THE MATTER OF ADOPTION OF DM

BY

SK AND WG (APPLICANTS)

JUDGMENT

1. The Applicants SK and WG are in a monogamous marriage which was solemnized at Christian Missions Fellowship Wangige in Kiambu County on 5th June, 1999. They have no children of their own. They wish to adopt the male child known as DM through the Originating Summons dated 24th April, 2017.

2. From the pleadings, the court gathers that both Applicants are self-employed business persons. They reside in Wangige area and both profess the Christian faith.

3. Records before the court indicate that the minor in this matter was found abandoned within the District Officer's camp in Waithaka by Administration officers who were on duty on 14th January, 2013. The matter was booked at the same office vide OB No. [Particulars Withheld]. The child was taken to Waithaka dispensary for first aid and later referred to the Abandoned Baby Center in Nairobi.

4. On 2nd September, 2013 the child was committed to the Abandoned Baby Centre by the Children's Court at Nairobi in P&C Case No. 221 of 2013. The A.P Commander Waithaka Division issued a final letter dated 28th August, 2013 in which they confirmed that no one had come forward to claim the child or raised any issue regarding the child. On 4th November, 2015 the Applicants took the child into foster care with a view of adopting. A Care and Placement agreement was signed on 4th November, 2015. Since then the child has been in the continuous care and custody of the Applicants.

5. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report dated 24th June, 2016. They had also issued a Certificate of Serial No. [xxxx] dated 17th June, 2016 declaring the child free for adoption. The guardian ad litem MKK filed a report dated 12th March, 2019 which was favorable and recommended the adoption of the child by the Applicants.

6. An officer from the Department of Children Services, Nairobi County 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 18th July, 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.

10. GNW, a brother to the female Applicant, and his wife IN by a joint affidavit sworn on 18th April, 2017 consented to be appointed as the legal guardians in the event that the Applicants are incapacitated and cannot care for the child.

11. The child was in court during the hearing and was jovial and appeared to have bonded well with both Applicants. He was calm and seemed to trust the Applicants whom he regarded as his parents. 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, he also gains a sibling as the Applicants are in the process of adopting a female child whom they have also been fostering.

12. I have perused the entire record and find 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.

13. 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 24th April, 2017 and order as follows:

- i. The Applicants, SK and WG are hereby allowed to adopt **Baby DM** who shall henceforth be known as **DK**.
- ii. His date of birth shall be 12th January, 2013. He is presumed to have been born in Kenya and the place of birth shall be Nairobi.
- iii. GNW and his wife IN are hereby appointed 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 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 11th day of April, 2019.

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L. A. ACHODE

HIGH COURT JUDGE