



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 135 OF 2018

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

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY SS

BY

ENM AND RNKM (APPLICANTS)

JUDGMENT

1. The Applicants ENM and RNKM are in a monogamous relationship which was solemnized at [particulars withheld] Centre in Nairobi on 22nd August, 2013. They have no biological child of their own but have an adopted daughter, PZM, whom they adopted by an order of the Court issued on 19th December, 2014. They wish to adopt the male child known as Baby SS through the Originating Summons dated 3rd September, 2018.
2. From the pleadings the court observes that the male Applicant works with [particulars withheld] as a Tax Auditor in the Investigation and Enforcement Department, while the female Applicant works with the [particulars withheld] as an Assistant Director Children Services. They reside in a three bedroom house in [particulars withheld] Area in Nairobi and both profess the Christian faith.
3. Records indicate that the minor in this matter was given up for adoption by his biological mother. On 22nd February, 2017 the biological mother of the child delivered him at Athi River Hospital after which she indicated to the hospital management that she did not wish to raise the child and would rather offer him up for adoption.
4. The Hospital management contacted the Athi River Sub-County Children's Office and also made a report of the mother's intention at Athi River Police Station vide O.B. No. xx/xx/xx/xxxx. The Children's officer interviewed the child's biological mother and prepared a report stating that the mother was unable to take up parental responsibility for the new born child. The child was placed at Mahali Pa Maisha Children's Home for temporary care.
5. On 12th April, 2017, the child was committed to the care and custody of Mahali Pa Maisha Children's Home by the Children's Court at Mavoko vide P&C Case No. 7 of 2017. The biological mother approached Buckner Kenya Adoption Services for advice on the adoption process. She was counselled and advised on the legal consequences of the adoption process. Annexed to the application is a letter dated 29th May, 2017 by the biological mother of the child expressing her decision to offer up her child for adoption.
6. Buckner Kenya Adoption Services explained to the biological mother the implications of her decision to offer up her child and furnished her with the "Adoption of Children - Explanatory Memorandum for Biological Parent/ Guardian". A certificate of acknowledgment dated 29th September, 2017 and signed by the biological mother of the child stating that she had read and understood the Explanatory Memorandum as explained to her is annexed to the application.
7. Following the counselling, the biological mother swore an affidavit of consent before a Commissioner for Oaths on 29th September, 2017 stating that she freely wished to offer up her child for adoption. A sister to the biological mother of the child confirmed that she was aware of her sister's decision to offer up her child and was in agreement with her decision. On 12th December, 2017 the Applicants took the child into foster care with a view of adopting. A Care and Placement agreement was signed on 12th December, 2017.
8. Prior to the hearing of the adoption application, Kenya Children's Homes Adoption Society prepared and filed a report dated 18th June, 2018 stating that the adoption will be in the best interest of the child. In the report, the society also forwarded the documentation that was used in declaring the child free for adoption by the Buckner Kenya Adoption Services case committee sitting of 15th November, 2017 where a Certificate of Serial No. xxxx dated 15th November, 2017 was issued declaring the child free for adoption. The guardian ad litem JNK filed

a report on 23rd May, 2019 which was favourable and recommended the adoption of the child by the Applicants.

9. An officer from the office of the Director of Children Services Nairobi 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 5th March, 2019 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 met all the requirements in the statute. Further that the child has flourished under the care of the prospective adoptive parents and has bonded well with the Applicants and his adopted sister.

10. This is a local adoption and from the record the Applicants have fulfilled all the legal 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.

11. The child was in court during the hearing and appeared to have bonded well with the Applicants. He was observed to be in good spirits and had flourished under the care of the Applicants. The Applicants' family members are said to be aware of the proposed adoption and support it.

12. The consent of the child's biological father was dispensed with since his whereabouts are unknown, as stated in the affidavit of consent sworn by the child's biological mother.

13. P N M, a sister to the male Applicant, by a Guardianship Confirmation form dated 15th October, 2017 consented to be appointed as the legal guardian in the event that the Applicants are incapacitated and cannot care for the child.

14. It is important to note that the orders sought by the Applicants herein relate to a child. In any matter concerning a child, the best interests of the child are of paramount importance as provided for under **Article 53(2)** of the **Constitution** and **section 4(3)** of the **Children Act No. 8 of 2001**.

15. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicants and the child during the hearing, 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 the child gain a loving and warm family, he also gains a sibling.

16. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 3rd September, 2018 and order as follows:

- i. The Applicants, ENM and RNKM are hereby allowed to adopt **Baby SS** who shall henceforth be known as **ZBM**.
- ii. His date of birth shall be 22nd February, 2017 and the place of birth shall be Athi River.
- iii. PNM 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 be and is hereby discharged.

It is so ordered.

SIGNED DATED and **DELIVERED** in open court this **20th** day of **June, 2019**.

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L. A. ACHODE

HIGH COURT JUDGE