



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 90 OF 2018

IN THE MATTER OF THE CHILDREN'S ACT, 2001

AND

IN THE MATTER OF MM (CHILD)

AND

PKM.....1ST APPLICANT

JWK.....2ND APPLICANT

JUDGEMENT.

1. The applicants **PKM** and **JWK** (herein referred to as the Applicants) approached the court by way of Originating Summons dated 3rd April 2018 and amended on the 11th February 2019 seeking the following orders:

- a. That the Applicants, PKM and JWK be authorised to adopt the child currently identified and known as MM.**
- b. That the child be renamed as AMK.**
- c. That this Honourable Court to declare that the child's date of Birth is 25th December 2010 and his place of birth is Nairobi County.**
- d. That the child be presumed to be a Kenyan Citizen, thus be entitled to the rights and benefits of a Kenyan Citizen.**
- e. That the guardian ad litem be discharged and JWH and SHM be appointed as the child's Legal Guardians in the event that the Applicants herein are incapacitated or in any way unable to discharge their parental obligations.**
- f. That the Registrar General be directed to make the appropriate entries in the Adopted Children's Register and do issue a Certificate to that effect.**
- g. That this Court do issue such further orders as are in the interest of justice.**

2. The Applicants jointly swore an affidavit on the 31st May 2017 making a declaration that they got married through Kikuyu Customary Law in 1994 in Murang'a County and that they would like to be recognised as husband and wife but their union has not been blessed with any issues.

3. According to their ID cards, the applicants are Kenyan citizens aged 54 and 50 years respectively.

4. It is their averment that they have not made such an Application before and that they are financially capable of taking care of the minor as evidenced by their occupations, Mpesa statements and Title Deed in respect of L.R. Ruiru East/ Juja Block x/ xxxx). The motivation to adopt the baby has been propelled by the desire to have a complete family and also to have somebody to inherit what they would have acquired

5. The child was found abandoned in the [Particulars Withheld] near Soweto Police Station. His parents disappeared and efforts to trace them have not been fruitful.

6. He was booked at Soweto Police Station under OB NO. [xxxx]. The minor was then placed temporarily at Imani Children's Home.

7. The minor was committed to Imani Children's Home for protection and care under Admission Number xxxx on 25th December 2010. This was as per the recommendation by the Embakasi Sub- County Children's Officer vide a letter dated 5th June 2011. The child was later formally Committed into the home under the Nairobi Children's Court protection and care case no 272 of 2011 for a period of 3 years which was then extended as evidenced by the letter dated 9th August 2016.

8. The child was declared free for adoption by Buckner Kenya Adoption Society vide their case committee meeting held on the 15th November, 2017 pursuant to **Section 159(1) (a) (i)** of the **Children Act** which states that:

“Abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and protection of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months.”

9. The child was placed with the Applicants on 19th November 2017 for the mandatory three months period bonding, care and control. The baby has been staying with the applicants since then.

10. The proposed Legal Guardians stated that they have known the Applicants for years and fully support the Applicants in their application for adoption of the minor.

11. On 11th October 2018, Mr. S M was appointed as guardian Ad litem and the Director children services directed to file an evaluation and assessment report within 45 days.

12. Prior to the hearing of this application, the Director Children Services, Buckner Adoption Society and the guardian Ad litem, filed their respective reports thus recommending the adoption. They described the applicants as people of means, financially stable, Christians and responsible with no criminal records.

13. In preparing their assessment reports for adoption, the stake holders relied on the following documents;

a. Initial Police Letter with OB No. [xxxx] dated 25th December 2010.

b. Admission form from Imani of Charity Children's Home.

c. A placement letter from Embakasi Children's Office requesting the court to commit the child to Imani Children's Home dated 5th June 2011.

d. First Committal Order C & P case No. 272/2011 dated 27th July 2011

e. Final Police Letter dated 7th September 2017.

f. A letter from Embakasi Sub- County Children's Office requesting the court to renew the expired Committal Order C & P case No. 272/2011 dated 9th August 2016.

g. Renewed Committal Order C & P case No. 272/2011 dated 3rd May 2017.

14. During the hearing, the applicants expressed their desire to be allowed to adopt the baby whom they fondly referred to as their son. They stated that they had understood the consequences of the adoption, the rights of the child and that it was permanent.

15. I have considered the originating summons herein and the supporting documents. There is no doubt that the applicants are Kenyan citizens whose age is well within 25 and 65 years which is the age bracket recommended for an adopting parent in compliance with Section 158 of the Children Act. As stated, the child was abandoned within the slum by an unknown person and every effort to trace his relatives have been futile. Accordingly, consent is dispensed with pursuant to section 159 of the Children Act.

16. Article 14(4) of the Constitution provides that, any child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth. Since both the applicants and the baby are Kenyans, this adoption is qualified to be a local adoption. From the stake holders' reports, my own assessment and interrogation of the applicants, I am satisfied that the applicants have met the necessary legal requirements to adopt the baby.

17. In the matter of L.O (CHILD)[2012]eKLR the court had this to say regarding the obligations of an adopting parent:

“For the avoidance of doubt, the rights and duties of the biological parents of the child are hereby extinguished and all the parental rights, duties, obligations and liabilities of the child, J MM , now vest in and shall be exercisable by and enforceable against the Applicants as the adopter parents as if the child were born in wedlock to the adopter parents and the child, to all intents and purposes, now stands to the adopter parents as a child born in wedlock and both adopter parents shall henceforth be the lawful father and mother of the child.

18. Finally, in deciding the application, the court is duty bound to make a finding as to whether the adoption is in the best interest of the baby. To arrive at this finding, I am guided by Article 53(2) of the Constitution and **Section 4(2) of the Children Act 2011**, which provides;

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

19. Considering that the child was abandoned and nobody has come forward to claim him, and further taking into account that the child has been with the applicants since placement, it will not be in his best interest that they be separated. The baby has fully bonded with the applicants who have shown immense love towards him as caring and responsible parents. I see no need in rejecting the application. The baby is need of parental love, basic provision like food, education, medical care, shelter and clothing all which the applicants are capable of providing. I am satisfied that the adoption shall be in the best interest of the child in the circumstances and therefore do allow the same with orders as follows;

- i. The Applicants are authorized to adopt the child currently identified and known as **MM**.
- ii. The child shall henceforth be known as **MMK**.
- iii. The date of birth of the child shall be **25th December, 2010** and his place of birth is Ongata Rongai Kenya.
- iv. The Registrar General shall enter this adoption in the Adoption Register.
- v. That the minor be declared a citizen by Birth.
- vi. That an order of adoption be issued to the Applicants herein.
- vii. The court hereby appoints **JWH** and **SHM** as the legal guardians of the minor child.
- vii. The guardian ad litem, **SM** be discharged forthwith.

DATED, DELIVERED AND SIGNED THIS 25TH JULY 2019

J.N.ONYIEGO

JUDGE