



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 64 OF 2017

IN THE MATTER OF CHILDREN'S ACT 2001

AND

IN THE MATTER OF BABY MA

S M M1ST APPLICANT

J W G 2ND APPLICANT

R U L I N G

1. Applicants in this matter are SMM and JWG. They are a married couple and make a joint application for the adoption of Baby MA. JWK who is a Kenyan born on 22nd August 1962. The application is made by OS filed on 3rd May 2017. She is divorced and therefore now single. They live in Langata with their three biological children. Their Children have consented to the adoption and say they are looking forward to the Child joining their family.

2. The First Applicant, SM was born in 1969 and therefore is forty eight years old. He hold Identity Card No. The Second Applicant, JW she was born on 12th June 1972 and is therefore 44 years old. She holds Identity Card No. The Applicants are married. They are both committed Christians and wish to bring the child up as one. The do not believe in divorce and believe in working through the ups and downs of life. They were assessed by the Kenya Children's Homes in September 2016 and were approved to adopt. Shortly thereafter, the baby, the subject of these proceedings was placed with them. The Applicants run a business which includes an estate agency and a hardware shop. From the evidence exhibited to the Application, they are able to support the Child.

3. The child Baby MA was born and Kenyatta National Hospital on 1st April 2016. He was left at KNH when his mother absconded on 10th April 2016. The Matter was reported to the Police at KNH Police Post. It was recorded under OB No. [particulars withheld]. The First Police Letter is dated 22nd July 2017. The Child was then placed at Mahali pa Maishi Children's Home. Thereafter the Children's Officer made an Application for an Order for the Care and Protection of the Child. The Final Police Letter dated 10th October 2016 confirms that no one has come forward to claim the child or raise any issue in regard to him. The Child was placed at Mahali pa Maisha Children's Home for one year pursuant to the Care and Control Order issued by the Children's Court (at Kajiado) under Children's Case No 48 of 2016. On admission the child was observed to be healthy and have normal growth. The Home has ensured that the child's immunizations schedule is followed. The child remained unclaimed for 6 months and on 10th October 2016 the Police provided a final letter confirming efforts to find the birth family had been unsuccessful. Hence the provisions of Section 159 (1)(a)(1) apply. It will be seen that some of the Reports refer to the Child as Baby E K. That is not a misnomer, but the name of the Child's biological mother.

4. The child was certified free for adoption by the Kenya Children's Homes Adoption Society Case Committee on its sitting on 9th November 2016 and Freeing Certificate Serial No. [particulars withheld] was issued. The Child was thereafter placed with the Applicants on 9th December 2016 and the Applicants entered into a care agreement on that day. The Application by Originating Summons was made after the statutory period had lapsed.

5. On 15th June 2017. Ms Pamela Otieno Ondicho was appointed the Guardian *Ad litem* for the child pursuant to Chambers summons filed on 3rd May 2017. The Guardian ad Litem has conducted here inquires and reported to the Court by her Report filed on 25th August 2017. The GAL recommends the proposed adoption. In her recommendations she has noted that the Applicants have the support of their families in the adoption.

6. The Report from the Department of Children's Services was filed on 21st September 2017. It notes that both Applicants come from large families. They have cared for other children previously and the reasons they give for wishing to adopt is they feel it is a mission of God. Both reports record that the Applicants have provided Baby M

7. The Applicants would like to appoint the First Applicant's Brother and his wife as Legal Guardians in the event that they become unable to look after the Child. They are DNM and KNM. They have

consented to the responsibility and role. A copy of their consent appears at SSM-19.

8. Having considered the evidence and recommendations before the Court and the best interests of the Child, the court makes the following orders:

(i) **THAT** the Applicants SMM and JWG be and are hereby authorized to adopt **BABY MA**

(ii) **THAT** the Registrar General does not make the appropriate entries on the register for Adoption.

(iii) **THAT** upon the issuance of the Adoption Order the child known as MDNM

(iv) **THAT** DNM and KNM ID No and respectively be appointed as legal guardians of the minor in the event that the Applicants are unable to care for him;

(v) **THAT** the child be presumed a Kenyan Citizen by birth.

THAT the Registrar General is directed to enter the adoption in the Adopted Children Register;

THAT the Director of Immigration be and is hereby authorised to issue the child with a Kenyan Passport.

FARAH S. M. AMIN

JUDGE

SIGNED DATED AND DELIVERED ON THIS 22nd Day of January 2018.

In The Presence of :

Court Clerk: Patrick Mwangi

Applicants: Mrs Kiguatha