



REPUBLIC OF KENYA

IN THE HIGH COURT AT KERUGOYA

ADOPTION CAUSE NO. E1 OF 2020

IN THE MATTER OF CHILDREN'S ACT

AND

IN THE MATTER OF BABY AA alias MW - (CHILD)

AND

1. FMW

2. JWW.....APPLICANTS

JUDGMENT

1. The applicants are a married couple under Kikuyu Customary marriage celebrated in 2005. They have no biological child of their own.

By an Originating Summons dated 12.10.2020 filed on the 13.10.2020, they seek Orders that:-

(1) They be authorized to adopt Baby AA,

to be known as MAWM.

(2) That the Honourable Court do dispense with the biological mother's consent.

(3) That MMW be appointed as the Legal Guardian to the baby.

(4) That upon the above orders being granted, the

Registrar General makes appropriate entries in

the Adopted Children's register in the

prescribed format.

2. Together with the Originating Summons, the following documents were filed:

- **Statement and affidavit in support of the application by the applicants.**
- **House of Charity Children's Home Care agreement.**
- **Consent to act as Guardian Ad litem.**
- **Particulars of the proposed child.**
- **Kenya Police service reports on the proposed child.**

· **Certificate declaring the child free for adoption.**

3. The Ministry of Labour and Social Protection, Children's Officer's report on the suitability of the applicants to adopt the proposed baby was filed on the 16.12.2020.

4. The proposed Guardian Ad litem who was also purposed as the Legal Guardian to the child was examined by the court on her understanding and appreciation of an adoption order, duties and responsibilities on the 17.12.2020.

The applicants were also examined on the even date.

5. The applicants are both teachers aged 44 and 45 years respectively, and Kenyan citizens.

The Adoption Society is the Change Trust Adoption Society, whose application for adoption was approved on the 20.9.2019. The child had been placed under the care of the House of Charity Children's Home where she was received, having been rescued from abandonment by a good Samaritan at Mukuru Village, Embakasi, Nairobi on the 11.1.2019.

6. Efforts to trace the biological parents were fruitless. The fact was confirmed by the final letter of abandonment by the Kenya Police Service Embakasi, dated 12.9.2019.

7. The child was declared free for adoption by a certificate dated the 9.10.2019 – **Section 156 of the Children's Act** – by the Charity Children's Home.

8. Upon the above, the child was placed with the applicants for the mandatory three months period after which the proposed adopted parents filed this originating summons seeking to be authorized to adopt the child.

9. I have considered the Children's Officer's report filed on the 16.12.2020 together with the former conducted by the Children's Home dated 9.11.2019. As stated earlier, the proposed adoptive parents are teachers by profession with good salaries. The mother is an employee of the [Particulars withheld] while the father teaches at [Particulars withheld].

They supplement their salaries with farming and rental income from some residential homes they developed at their plot.

They have adequate residential premises of their own at Mwea Town and are Christians of the Catholic Faith Church at Wang'uru.

The report is very positive and recommends that the adoption orders be granted for the best interest of the child – **Section 176 Children's Act**.

10. Pursuant to **Section 157 (1) of the Children's Act**, the child who was found abandoned at Embakasi Nairobi is presumed to be a Kenyan Citizen. See also **Article 14 (4) of the Constitution**.

By the various reports and home visits, the applicants have been certified fit to adopt the child. They are stable, professionals, mentally and morally fit, with no criminal record and they both appreciate the consequences and responsibilities that attach to an order of adoption.

11. **Article 53 (2)** of the Constitution emphasizes that the best interest of the child is paramount. The child will have a family and a home if the orders are granted. The applicants are willing and ready to give parental guidance and a loving home and family to the child.

They have met all legal requirements for an adoption order.

12. Consequently, for the best interest of the child, the application is allowed with orders that:-

- 1. The applicants are hereby authorized to adopt Baby AA, to be known as MAWM.**
- 2. The child is presumed to be a Kenyan Citizen.**
- 3. The consent of the biological parents is hereby dispensed with.**
- 4. That MMW is appointed the Legal Guardian of the minor child.**
- 5. The Registrar General is directed to enter the adoption order in the Adopted Children's Register.**

Orders accordingly.

Dated, Delivered and Signed at Kerugoya this 10th Day of February, 2021.

J. N. MULWA

JUDGE