



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

ADOPTION CAUSE NO.3 OF 2019

IN THE MATTER OF KM & AK (MINORS)

JNM

NNN.....APPLICANTS

RULING

1. The applicants herein moved this court vide the Originating Summons dated 20/03/2019 and brought under Section 157 (1) and 158(1) of the Children's Act and Rule 4 and 14 of the Adoption Rules and seeking for orders: -

- 1)spent
- 2) *That the consent of the infant's natural parents be dispensed with*
- 3) *That the applicants be authorized to adopt KM and AK (minors)*

2. The application is supported by the applicants' joint supporting affidavit wherein they adopted their statement in support of an application for adoption orders.

3. The applicants in their statement in support of the application for adoption order averred that the minors herein were born on 9/02/2010 and 12/04/2012 to unidentified mother and were found abandoned on 9/06/2014 within [Particulars withheld] village Embu County and which case was reported at Itabua Police Station under OB [xxxx] and the children were thereafter committed to DOE Embu Children's Home for safe custody. Further that the 1st applicant is a farmer and the 2nd applicant a business lady and thus they have stable income. That they are both adults having solemnized their marriage at [Particulars withheld] Church CPK Embu in 1996 and hence able to provide the children herein with a stable family environment. Copies of their National Identity Cards and a Certificate of Marriage were annexed to the application.

4. The applicants further deposed that the infants whom they sought to adopt were put in their care and possession on or about 09/11/2016 and have shown very positive progress and are copying very well and further that they had completed the necessary forms with the DOE Embu Children's Home who have no objection to the adoption.

5. When the application came up for hearing on 16/10/2019, the court directed that Children's Officer report and that of the (Kenya) Adoption Society be filed.

6. Ripples International Adoption Centre in its reports both dated 12/11/2017 recommended that the children herein are available for adoption and further that adoption would be for their best interest. Certificates to declare the children free for adoption were attached to the said reports. The proposed guardian *ad-litem* (LMNZ) further filed a Report dated 8/11/2019 recommending the adoption of the children herein by the applicants as it is in their best interests.

7. I have considered the application herein and all the documents filed before this court and it is my view that the main issue for determination is whether the applicants have made a case for grant of the orders sought.

8. The power to make an adoption order is bestowed upon this court by virtue of section 154(1) of the Children's Act. Section 156 of the Children's Act requires that for any arrangement to be commenced for the adoption of a child, the said child should be at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf. Section 157 further provides that any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya.

9. However, there is a proviso under the said section that no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants, as the case may be evaluated and assessed by a registered adoption society in Kenya.

10. Section 158(1) further requires that in an application for adoption and where there is joint application (as in this case) at least one of the joint applicants must have attained the age of twenty-five years and at least twenty-one years older than the child but has not attained the age of sixty-five years; or (b) is a relative of the child; or (c) is the mother or father of the child. Section 158 (2)-(4) provides for further conditions which applicants ought to comply with in filing the application for adoption. Amongst those conditions is the consent by the parent. However, section 159 gives this court the powers to dispense with the said consent in the case of the parents or guardian of the child, that he has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child.

11. Have the applicants herein complied with the above legal provisions? The consent to an adoption order in respect of the infants herein sworn on 20/03/2019 by Sr. Teresia Wanjiku Mburu, the Administrator of DOE Embu Children’s Home indicates that the minors herein were born on 9/02/2010 and 12/04/2012 respectively. As such, at the time of the application herein (20/03/2019), the children were more than six (6) weeks old. The children were also declared free for adoption by Ripples International Adoption Centre, a registered Adoption Society.

12. The Applicants averred that the children herein were received in their care and possession on or about 09/11/2016 and thus the minors had been in the continuous care and control of the applicants for a period of three consecutive months preceding the filing of the application. The applicants herein annexed to the application copies of their national identity card and wherein it was indicated that they were born in 1963 and 1962 respectively and hence at the time of the application both of them had attained the age of twenty-five years and at least twenty-one years older than the children but have not attained the age of sixty-five years.

13. The record shows that the children herein were abandoned within [Particulars withheld] village and were taken to Itabua Police Station by members of the public and nobody has come out to claim them and the children were committed to DOE Embu Children’s Home for safe custody and had been under the care of DOE Embu Children’s Home till the date of the instant application. As such, the consent by the parent is hereby dispensed with by virtue of Section 159.

14. It is my considered view that the applicants herein have complied with all the legal requirements under the Children’s Act. The applicants have therefore made a case for the issuance of the orders sought.

15. The application herein is thus merited and allowed in terms of prayers 2 and 3 of the Originating Summons.

16. It is so ordered.

Delivered, dated and signed at Embu this 10th day of February, 2021.

L. NJUGUNA

JUDGE

.....for the Applicants