



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**ADOPTION CAUSE NO. 2 OF 2019**

**IN THE MATTER OF S (INFANT)**

**WMM )**

**AWM ).....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 Stephen (infant)

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

3. The applicants averred that the minor herein was born to unidentified mother on 22/08/2013 and was found abandoned at Gaikero within Manyatta Police Station area. That the matter was reported at Manyatta Police Station under OB 18/23/24/12/014 and Embu Children's Court committed the child to Embu Children's Home on 16/01/2015 for safe custody and care. Further that the 1<sup>st</sup> applicant is a at [particulars withheld] and a farmer practicing coffee farming and the 2<sup>nd</sup> applicant an at [particulars withheld] employed at [particulars withheld] and thus they jointly have stable income. That they are both adults having solemnized their marriage at A.C.K Kimbimbi Parish-Kirinyaga County on 27/11/1999 and hence able to provide the child herein with a stable family environment.

4. The applicants further deposed that the infant herein was received into their care and possession on or about 25/09/2015 and has shown very positive progress and is copying very well and further that they have completed the necessary forms with the DOE Embu Children's Home who have no objection to the adoption. Copies of their National Identity Cards and a Certificate of Marriage were annexed to the application.

5. At the hearing of the application herein, this court gave directions that the necessary reports from the Children's Officer and Adoption Society of Kenya be filed.

6. Ripples International Adoption Centre in its report dated 12/11/2017 recommended that the child herein is available for adoption and that adoption would be for his best interest and annexed to the said report a certificate to declare the child free for adoption. A report by the Proposed guardian *ad-litem* (RMK) dated 8/11/2019 was further filed and which report recommended the adoption of the child herein by the applicants as it is in his best interests.

7. I have considered the application herein, the annexure thereto and all the documents filed before this court. In my view, the main issue for determination is whether the application herein is merited.

8. The law on adoption is provided for under the Children's Act. Section 154(1) donates jurisdiction to this court to make an adoption order. Under Section 156 of the Act, 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 requires that the child concerned should have 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.

9. Section 158(1) further requires that in an application for adoption and where there is joint application (as in the instant case) at least one of the joint applicants must have attained the age of twenty-five years and must be 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 which includes 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.

10. In the instant case, the consent to an adoption order in respect of the minor herein sworn on 20/03/2019 by Sr. Teresia Wanjiku Mburu - the Administrator of DOE Embu Children's Home indicates that the minor herein was born on 22/08/2013. As such, at the time of the application herein (20/03/2019), the child herein was more than six (6) weeks old. The child was also declared free for adoption by Ripples International Adoption Centre, a registered Adoption Society in the report dated 12/11/2017. The Applicants averred that the child herein was received in their care and possession on or about 25/09/2015 and thus he had been in the continuous care and control of the applicant for a period of three consecutive months preceding the filing of the application.

11. The applicants herein annexed to the application copies of their national identity cards which indicate that they are aged 33 and 34 years respectively and hence at the time of the application herein, both of them had attained the age of twenty-five years and at least twenty-one years older than the child but have not attained the age of sixty-five years. From the records, it is clear that the child herein was found abandoned at Gaikero within Manyatta Police Station area and he was subsequently taken to Embu Children's Home and nobody has come to demand him. As such, the consent by the parent is hereby dispensed with by virtue of Section 159.

12. Considering all the above, it is my view that the applicants herein have satisfied the conditions for grant of adoption orders as provided for under the Children's Act. The orders sought herein are granted in terms of prayers 2 and 3 of the Originating Summons.

13. Orders accordingly.

**Delivered, dated and signed at Embu this 10<sup>th</sup> day of February, 2021.**

**L. NJUGUNA**

**JUDGE**

.....for the Applicants