



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

ADOPTION CAUSE NO.4 OF 2019

IN THE MATTER OF TB (MINOR)

1. JMN)

2. JWM)....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 TB (infant)

2. The application is supported by the applicants' supporting affidavit wherein they adopted their statement sworn on 20/03/2019 in support of the application for adoption orders and wherein they averred that the infant herein was born to an unidentified mother on 2/03/2012 and was found abandoned near Urban Primary School, Embu Town and the case reported at Embu Police Station vide OB No. 25 of 2/07/2013 and the Embu Children's Court committed the child to D.O.E Embu Children's Home on 17/10/2013 for safe custody. That the applicants are both farmers practicing Khat (miraa) farming and also casual labourers and thus they have stable income.

3. That they are both adults married under Kimbeere customary law in the year 1996 and hence able to provide the children herein with a stable family environment. Copies of their National Identity Cards and an affidavit of marriage were annexed to the application. The applicants further deposed that the infant whom they sought to adopt was received in their care and possession on or about 10/10/2014, has shown very positive progress and is copying very well and further that they have completed the necessary forms with the Ripples International where the child was rescued to, and the said home has no objection to the adoption of the child herein.

4. At the hearing of the application herein, the court directed that the prerequisite reports be filed and which directions were complied with.

5. Ripples International Adoption Centre in its report dated 12/11/2017 recommended that the child herein is available for adoption and further that adoption would be for his best interest. Certificates to declare the child free for adoption were attached to the said reports. The guardian *ad-litem* (LMG) further filed a Report dated 8/11/2019 recommending the adoption by the applicants of the minor herein as it's in his best interests.

6. I have considered the application and all the documents filed before this court and in my view, the main issue for determination is whether the same is merited.

7. Adoption is provided for under the Children's Act. Section 154(1) of the Act bestows this court with the power to make an adoption order. Section 156 further 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 allows for adoption of a child whether or not the child is a Kenyan citizen, or was or was not born in Kenya and provided 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.

8. Section 158(1) further requires that in an application for adoption and where there is a joint applicant (as it is 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(3)(d) is to the effect that an adoption order shall not be made in the case of joint applicants, if they are not married to each other; Section 158 (2)-(4) further provides for 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.

9. 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 D.O.E. Embu Children's Home indicates that the minor herein was born on 02/03/2012. As such, at the time of the application herein, the child 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 and a certificate in that respect issued. The Applicants averred that the child herein was received in their care and possession on or about 10/10/2014 and thus he 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 cards which shows that they were born on 15/11/1976 and 11/07/1966 respectively.

10. As such, 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. The applicants annexed to the application their affidavit of marriage which shows that they are married under Kimbeere customary law. From the records, it is clear that the child herein was found abandoned near Urban Primary School, Embu Town and the case reported at Embu Police Station and investigations commenced to trace the mother or relatives of the said minor had been futile and thus no one has come forward to claim the minor herein. As such, the consent by the parent is hereby dispensed with by virtue of section 159.

11. 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 are granted in terms of prayers 2 and 3 of the Originating Summons.

12. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU THIS 10TH DAY OF FEBRUARY, 2021

L. NJUGUNA

JUDGE

.....for Applicants