



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**FAMILY DIVISION**

**ADOPTION CAUSE NO. 147 OF 2019**

**In The Matter Of The Children's Act No. 8 Of 2001 And The ADOPTION RULES**

**AND**

**IN THE MATTER OF ADOPTION OF BABY JB (THE CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION OF ADOPTION BY RML**

**JUDGMENT**

1. Before Court is the Originating Summons dated 25<sup>th</sup> October 2019 by which the Applicant **RML** seeks for orders **THAT:-**

**“1. Pursuant to Article 14(4) of the Constitution of Kenya, 2010 and Section 11 of the Children's Act, 2010, this Honourable Court be pleased to declare that the child, BABY JB a Kenyan citizen by birth;**

**2. Pursuant to the provisions of SECTION 159 OF THE CHILDREN'S ACT, 2001, this Honourable Court be pleased to dispense with the requirements of Consent to the adoption as required by the provisions of SECTION 158 OF THE CHILDREN'S ACT, 2001;**

**3. The Applicant, RML, be authorized to adopt BABY JB (the child);**

**4. Upon the making of the Adoption Order, the child be known as NJB;**

**5. Upon the making of the Adoption Order, GKN be appointed as the Legal Guardian of the child as provided for by the provisions of SECTION 164 OF THE CHILDREN'S ACT, 2001.**

**6. Upon the making of the Adoption Order, the Registrar-General do make an entry recording the adoption and the estimated date of birth of the child as 23<sup>RD</sup> OCTOBER, 2017 in the Adopted Children Register as provided for by SECTION 170 OF THE CHILDREN'S ACT, 2001.**

**7. The costs of this Application be in the cause.”**

2. The Summons was canvassed by way of viva voce evidence and parties appeared before Court via the online platform on **5<sup>th</sup> February 2021**.

3. The Applicant **RML** told the Court that she was an Accountant working with the **[Particulars withheld]** in Nairobi. The Applicant told the Court that she was initially married but that the marriage ended in divorce in the year **2020**. That she seeks to adopt the subject-child who is now **3 years old**. The Applicant states that her family are aware of and welcome her decision to adopt the child. She confirms that she fully understands the legal implications of an adoption order and undertakes to accord the subject child all the rights and privileges due to a biological child.

4. **PW2 JKM** is the Guardian Ad Litem in this matter. She confirms that she has filed her Report in Court in which she recommends that the

adoption be allowed.

5. **PW3 GRACE EKAMBI** is an Officer from **Little Angels Network**, the Adoption Agency which declared the child Free for Adoption. She produces in Court the Report of the Agency which recommended the Adoption.

6. **PW4 MARY ATATI** is a Principal Children's Officer. She produced in Court the Report dated **11<sup>th</sup> January 2021**, prepared by the **Director, Children's Services** which also recommends that the Adoption be allowed.

7. The duty of this Court is to analyze the evidence available to determine whether this application for Adoption should be allowed. I have considered the evidence adduced in open Court as well as the various Affidavits and Reports filed in this matter. The Preliminary requirements for the making of an Adoption Order are set out in **Section 156(1)** of the **Children's Act** which provides as follows:-

**“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”**

8. The subject child is a boy-child who was born on **23<sup>rd</sup> October 2017**. He is now about **3<sup>1</sup>/<sub>2</sub> years old** and is above the age limit prescribed in the Act. The **Little Angels Network** which is a Registered Adoption Agency have annexed to their Report the original copy of their Certificate Serial Number [xxxx ] dated **2<sup>nd</sup> February 2018** declaring the child Free for Adoption. Accordingly I find that the legal prerequisites for an Adoption order have been met.

9. The Applicant is a Kenyan citizen as evidenced by the copy of her National Identity Card annexed to the Summons (See **page 16** of Bundle of Documents). The Applicant told the Court that she got married to one **Mr. Nguyo Milcinovic** on **7<sup>th</sup> June 2014**. However the marriage fell apart and the couple separated in the year **2018**. That her husband left the matrimonial home and is now cohabiting with another lady with whom he has a child. That the marriage was eventually dissolved in the year **2020**. Annexed to the Applicant's Further Affidavit dated **10<sup>th</sup> March 2021** is a copy of a **Decree Nisi** dated **18<sup>th</sup> July 2020** dissolving the marriage between the Applicant and her husband.

10. The Applicant stated that she wishes to adopt a child as she has not been able to bear a biological child of her own. She confirms to the Court that her family are aware of and support her intention to adopt the subject-child.

11. The Applicant is a trained Accountant and is currently employed at the [particulars withheld]. She earns about **Kshs. 100,000/-** per month which is more than sufficient to provide for the needs of the child. The Applicant is also said to own two plots of land in **Athi River**. The Applicant has annexed copies of her bank statements from **Standard Bank** (Annexure 'RML-1') to the Further Affidavit dated **10<sup>th</sup> March 2021**. These indicate that she is financially stable. I am satisfied that the Applicant is financially secure and is able to cater for the needs of a child.

12. The Applicant is a Christian and plans to raise the child in the Christian Faith. Annexed to the Summons is a recommendation dated **22<sup>nd</sup> July 2019** issued by one **Bishop [particulars withheld]** of the [particulars withheld]. A medical evaluation conducted by **Dr. Samson Wanjala** on **22<sup>nd</sup> July 2019** found that the Applicant was in good mental and physical health. Finally the Applicant has annexed at **page 15** of the Summons a Police Clearance Certificate issued by the **Kenya Police Service** on **14<sup>th</sup> December 2018** indicating that she has no criminal record. Based on the above I am satisfied that the Applicant is a suitable adoptive parent.

13. The subject-child was born on **23<sup>rd</sup> October 2017** at **Naivasha District Hospital**. Having been born in Kenya of a Kenyan mother the child is a citizen of Kenya by birth. The child's biological mother one **GCR** approached **Little Angels Network** on **25<sup>th</sup> October 2017** (**four (4)** days after delivering the child) seeking to give up the child for adoption. The mother stated that she already had **five (5)** other children and had been abandoned by her husband. She therefore felt unable in the circumstances to provide for another child. The biological mother signed the initial consent on **25<sup>th</sup> October 2017**.

14. The Report of the Adoption Agency dated **2<sup>nd</sup> February 2018** indicates that upon being approached by the child's mother the child was admitted to **Neema House Infant Rescue Centre**. A social enquiry was conducted which confirmed that the mother was a peasant farmer living in **Naivasha** who was not able to provide for an extra child. The social enquiry further revealed that the child's biological father had abandoned the family after his wife fell pregnant with the subject-child. That the said father cut off all communication with her family and the mother has no idea of his whereabouts.

15. I have seen the consent signed by the child's biological mother annexed at **pages 9 and 10** of the Adoption Agency's Report dated **2<sup>nd</sup> February 2018**. As such I am satisfied that the biological mother of the child has given an informed consent to this adoption. The child's biological father could not be traced and as such no consent was obtained from him. Given that the father could not be traced I dispense with the requirement for his consent under **Section 159 (1) (a)** of the **Children Act**.

16. In deciding upon any matter involving a child Courts are obliged to give priority to the best interests of the said child. **Section 4(2)** of the **Children Act** provides:-

**“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of Law administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” [own emphasis]**

17. The subject-child was born to a mother who was unable to take up his care. The mother made the decision to give up her child for

adoption. The child was taken in by an Infant Rescue Centre and was later placed in the custody of the Applicant under a Foster-Care Agreement dated 3<sup>rd</sup> November 2018 (page 14 of the Applicant's Bundle of Documents).

18. The Applicant lives with the child in a three bed-roomed apartment at the **NHC Apartments in Lang'ata Nairobi County**. A home visit revealed that the home was well-furnished and connected to all amenities like water and electricity. The Apartment is in a secure gated community and the Applicant has hired a Nanny to help her care for the child. The Apartment is also located near several social amenities like **St. Mary's Hospital**, schools and shopping centres like **Galleria Mall**. The home was found to be a good environment in which to raise the child.

19. The Applicant has appointed her close family friend **GKN** as the Legal Guardian for the child. The said Legal Guardian has signed a consent dated 25<sup>th</sup> October 2019 (page 17 of the Summons). I am satisfied that the Applicant has provided the child with a secure and loving home environment.

20. I am mindful that this is a case of a female Applicant seeking to adopt a male child which is prohibited by **Section 158(2) (b)** of the **Children Act**. However **Section 158(2) (b)** states that where "**the Court is satisfied that there are special circumstances that justify the making of an adoption order,**" then authority may be given to a female Applicant to adopt a male child.

21. The Reports from the **Adoption Agency** and the **Director, Children's Services** indicate that when the Applicant commenced this adoption process she was still in a marital union with her husband. Indeed in **January 2018** the child was released into the custody of the Applicant and her husband **as a couple**. It is only later that the Applicant's husband left the family home and went to live with another woman. The Applicant was left with the child and wishes to complete the adoption process she had started.

22. I note that the child has been living with the Applicant since **January 2018**. He knows her as his mother. This is the only family he knows. To wrench this child out of the arms of the only parent he knows, and to return him to a Children's Home will in my view be extremely cruel and will subject the child to unnecessary trauma and distress. I was able to observe the child sitting comfortably on the Applicant's lap. He was happy and appeared well cared for. It is obvious that the child has bonded with the Applicant and her family. Therefore in my view special circumstances do exist to allow this adoption.

23. Finally I am satisfied that this adoption will serve the best interests of the child. Accordingly I allow this Summons and make the following orders:-

- i. The Applicant **RML** is hereby authorized to adopt **BABY JB**.
- ii. The Child will henceforth be known as **NJB**.
- iii. The child is a Kenyan citizen by birth.
- iv. **GKN** is appointed as the Legal Guardian of the child.
- v. The Registrar-General is directed to make the relevant entry in the Adopted Children's Register.
- vi. No orders on costs.

**DATED IN NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH, 2021.**

.....  
**MAUREEN A. ODERO**

**JUDGE**