



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 77 OF 2018

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES

AND

IN THE MATTER OF ADOPTION OF BABY R alias ABANDONED

BABY BOY alias R (S) (THE CHILD)

AND

IN THE MATTER OF AN APPLICATION OF ADOPTION BY JGM and LNG

JUDGMENT

(1) Before this Court is the Originating Summons dated **28th March 2018** by which the Applicants seek the following orders:-

(i) **THAT** the Applicants JGM and LNG be and are hereby authorized to adopt BABY R alias B ABANDONED BABY R alias ABANDONED BABY B alias R (S) and the child be called SMG henceforth.

(ii) **THAT** SKW and DWW be and are hereby appointed LEGAL GUARDIANS of the child in the event a misfortune befalls the Applicants rendering them unavailable or incapable of taking care of the child.

(iii) **THAT** the REGISTRAR-GENERAL be and is hereby ordered to make the appropriate entries in the Adopted Children's Register in respect of SMG.

(iv) **THAT** SMG was born in Kenya and is presumed to be a Kenyan citizen by birth and be entitled to a Kenyan Pass-port."

(2) The Application was disposed by way of viva voce evidence and the parties appeared before the Court via the online platform on **5th February 2021**. PW1 was the subject child I will consider his evidence later in this Judgment.

(3) PW2 and PW3 were the Applicants JGM and LNG. The Applicants are a couple who got married to each other under **Kikuyu Customary Laws** in the year **1986**. They later solemnized their union by way of a Church wedding on **21st November 1999**. The couple have not borne any child together. They told the Court that they are desirous of adopting a child in order to complete their family and to have someone to inherit their property.

(4) The Applicants stated that the subject child has been living with them at their farm in [particulars withheld] since the year **2012**. That their family members are aware of and support their intention to adopt the child. Both Applicants confirmed that they understood the legal implications of an Adoption order. They undertook to accord to the child all the rights and privileges due to a biological child including the right to inheritance.

(5) PW4 GRACE EKAMBI is an Officer from the **Little Angels Network** the Adoption Agency which declared the child Free for Adoption. The Agency filed its Report dated **19th September 2012** recommending the Adoption.

(6) PW5 MARY ATATI is a Principal Children's Officer. She confirmed that the **Director Children's Services** had filed the Report dated **19th February 2018** recommending the adoption.

ANALYSIS AND DETERMINATION

(7) 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 was born on **12th February 2010**. He is now **eleven (11) years old** way above the **six (6) week** age limit provided for in law. The **Little Angels Network** which is a Registered Adoption Agency have annexed to their report, the original copy of their Certificate Serial Number [...] dated **19th September 2012** declaring the subject-child Free for Adoption. As such I find that all the necessary requirements for an adoption order have been met.

(9) This Court is required to assess the suitability of the Applicants as Adoptive parents. The Applicants are a married couple both of whom are Kenyan citizens as proved by the copies of their National Identity Cards annexed to the Summons (Annexures **1(a)** and **1(b)** at **pages 7-8**). The couple got married under **Kikuyu Customary Law** in the year **1989**. Thereafter the couple solemnized their union on **21st November 1999**. This is proved by the copy of their Marriage Certificate Serial Number [xxxx] annexed at **page 9** of the Summons.

(10) The Applicants are both farmers and live on their farm near [particulars withheld] **Town**. From their farming activities the Applicants earn about Kshs. **50,000/-** per month which is more than adequate to enable them provide for the needs of the child. Annexed at **page 26** of the Summons is a copy of the 1st Applicant's Bank statement. Further vide the Supplementary Affidavit dated **1st July 2020** the 1st Applicant has annexed a copy of his Statement of Account from [Particulars Withheld] **Sacco ('SUPP-1')** whilst the 2nd Applicant has annexed a copy of her M-pesa statement (**'SUPP-2'**). A perusal of the Applicant's financial statements indicates that they are financially secure and have sufficient funds to provide for the needs of the child. It must be remembered that the Applicants also own approximately **8 acres** of very prime agricultural farmland in **Kigumo Nyeri County**; which is a very valuable asset.

(11) The Applicants told the Court that they are both Christians and intend to raise the child in the Christian faith. They state that the child has already been embraced by their respective families who view him as one of their own. The 2nd Applicants younger brother have accepted and his wife to be the Legal Guardian for the child. The Applicants are in good health. They have both annexed copies of their medical evaluations conducted by a **DR. KAMWATI** at Kigumo Sub-District Hospital on **8th July 2016** (pages **16-20** of Summons). They have annexed copies of their Certificates of Good Conduct issued by the **Kenya Police** proving that neither has a criminal record (Annexed at **pages 24-25** of the Summons). All in all I am satisfied that the Applicants are suitable adoptive parents.

(12) The subject child is a boy-child who was born on **12th February 2010** at the **Ruiru Sub-District Hospital**. He is now **eleven (11) years old**. The child's biological mother whose name was given as **TW** absconded from the hospital after his birth thereby abandoning the child.

(13) The matter was reported at **Ruiru Police Station** vide OB Number **xx** of **xxnd March 2010**. Later the **Ruiru Children's Court** committed the child to **Happy Life Children's Home** for Care and Protection. On **23rd January 2013** the child was released to the custody of the Applicants under a Foster Care Agreement.

(14) **Article 14** of the **Constitution of Kenya, 2010** deals with the question of **Citizenship**. **Article 14(4)** provides as follows:-

“(4) A child found in Kenya who is, or appears to be, less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”

(15) The subject-child was abandoned shortly after his birth at the **Ruiru Sub-District Hospital**. He was then transferred to **Thika Level 5 Hospital** for initial nursing care. A letter dated **22nd February 2010** annexed to the Report filed by the Adoption Agency from **Thika Level 5 Hospital** confirms this. Given that the child was born in the Republic of Kenya he is declared to be a Kenyan citizen by birth.

(16) The biological mother of the child whose name was given as **TW** abandoned the child at **Ruiru Sub-District Hospital** and apparently disappeared. Efforts to trace her did not bear any fruit. Neither did any person come forward to claim the baby. Annexed to the Summons at **page 27** is the original Police letter dated **22nd March 2010**. At **page 28** is the Final Police Letter dated **22nd September 2011** written by the Officer Commanding **Ruiru Police Station** indicating that efforts made by Police to trace the biological mother and/or relatives of the child have been unsuccessful.

(17) 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]

(18) This is a child who was abandoned at birth. He faced an uncertain future in Children's Homes and Institutions. This adoption affords the child the opportunity to be raised in a loving and secure home environment.

(19) The child has been living with the Applicants since **January 2013**. This is the only family he knows. The reports filed by the

Guardian ad Litem and the **Director Children's Services** indicate that the child has bonded well with the Applicants. They have enrolled him in school and provide for all his needs.

(20) I was able to interview the child online. He was a happy child who appeared healthy and well cared for. The child referred to the Applicants as his father and mother. He confirmed that he was in **Grade 4** at **[Particulars Withheld] School**.

(21) The Children's officer conducted a home visit to the Applicants farm where they live with the child. The homestead was reported to be located in **Kigumo Town**, off **Gathugu Road**. The Applicants live in a three bed-roomed house which they have built on their **8 acre** farm. The environment was reported to be both safe and secure. The home is located close to **Kibicho Police Station**. The home environment was found to be conducive for raising the child. In my own view it is certainly advantageous for the child to be raised in the countryside where he can interact closely with nature.

(22) From the material placed before this Court, I am satisfied that this adoption is certainly in the best interests of the child. They have appointed as Legal Guardians the 2nd Applicant's brother **SKW** and his wife **DWW**. Both have signed a consent to act as Legal Guardians in the event the Applicants are unavailable or unable to care for the child (see consent at **page 11** of Summons).

(23) Accordingly I allow this application and I make the following orders:-

(a) The Applicants **JGM** and **LNG** are authorized to adopt the child known as **BABY R** alias **BABY ABANDONED BABY R** alias **ABANDONED BABY B** alias **R**.

(b) The child shall henceforth be known as **SMG**.

(c) The child is declared to be a Kenyan citizen by birth.

(d) **SKW** and **DWW** are hereby appointed as legal guardians for the child in the event a misfortune befalls the Applicants rendering them unavailable or incapable of taking care of the child.

(e) The Registrar General is directed to make the relevant entry in the Adopted Children's Register.

(f) No orders on costs.

DATED IN NAIROBI THIS 12TH DAY OF MARCH, 2021.

.....

MAUREEN A. ODERO

JUDGE