



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ADOPTION 3 OF 2020**

**IN THE MATTER OF BABY T also known as UNKNOWN AFRICAN BABY**

**S M T**

**M G T .....JOINT APPLICANTS**

**A N D**

**LITTLE ANGELS NETWORK.....RESPONDENTS**

**JUDGMENT**

1. Through an originating summons dated 10<sup>th</sup> February, 2020, S M T and M G T moved this court seeking; that they be allowed to adopt baby T also known as Africa baby boy; that the baby be declared a Kenyan citizen; that consent to adopt pursuant to Section 159 of the Children Act be dispensed with; that AMT be appointed as legal guardian to the baby; that the Registrar General to enter the adoption in the adopted children’s register.
2. The application is supported by a statement of particulars jointly sworn on 10<sup>th</sup> Februaruy,2019 by the applicants stating that; they are husband and wife born on 2<sup>nd</sup> June 1969 and 31<sup>st</sup> Decmber,1965 respectively; they are Kenyan citizens residing within Mombasa at [particulars withheld], area and, they solemnized their monogamous marriage on 2<sup>nd</sup> february,2002 at [particulars withheld] Nairobi.
3. The couple has not been blessed with any biological child nor have they adopted before. Their motivation to adopt the baby has been propelled by; Firstly, the desire to offer a child a place in their family as they await for the Lord to bless them with a biological baby; secondly, the need to have a complete family with a child or children. Economically, they are financially stable. The first applicant who is a holder of master’s degree in economics is a motivational speaker and writer while the 2<sup>nd</sup> applicant is engaged in baking business.
4. Regarding the child presumed to have been born around 25<sup>th</sup> December, 2017, he was found abandoned inside a bush around south C area. He was rescued by a good Samaritan a M/s SM a member of staff Red cross who took him to Kenyatta National Hospital for medical attention. The matter was later reported to Kenyatta police station vide OB No xx/xx/xx/xxx.
5. Through the intervention of the children office vide a letter dated 18<sup>th</sup> January, 2018, the child was admitted to Nest Children’s Home on 31<sup>st</sup> January, 2018 for protection and care.
6. On 26<sup>th</sup> Febraury,2018, the child was formally committed to the said children home vide Nairobi Children Court in P&C case No 55 of 2018 for a period of 3 years.
7. Despite every effort to trace the mother of the baby and or any close relatives, nothing successful came up. This is evidenced by the police department Kenyatta Police station vide their letter dated 26<sup>th</sup> September, 2019 in which they confirmed that they have not managed to trace the child’s relatives.
8. Six months having lapsed, the process to adopt the baby commenced. The child was eventually declared free for adoption on 3<sup>rd</sup> October,2018 by Little Angles Network in its case committee held the same day. The child was consequently placed with the applicants on 5<sup>th</sup> March 2020 for the mandatory 3months continuous period for care and control.
9. Upon instituting this suit, the applicant sought the appointment of a guardian Ad litem under a chamber summons dated 10<sup>th</sup> February, 2020. Subsequently, GMG was appointed guardian Ad litem on 17<sup>th</sup> September, 2020. Both the guardian Ad litem and the Director Children

Services were directed to file their evaluation reports within 14 days.

10. Prior to the hearing date, the Director Children Services filed a report dated 8<sup>th</sup> October, 2020 recommending the adoption. The guardian Ad litem also did file his on 14<sup>th</sup> October, 2020 also recommending the adoption. In the same vein, Little Angles filed their report on 8<sup>th</sup> September, 2020 approving the adoption.

11. During the hearing, the applicants urged the court to grant their prayers to adopt the baby. They however appreciate the consequences of adopting a baby.

12. I have considered the application herein, materials in support and testimony by the applicants. There is no doubt that the child herein was found inside a bush by a good Samaritan. As confirmed by the police investigation via their letter of 26<sup>th</sup> September, 2018, nobody has come forth to claim the baby. The baby has remained unclaimed since 25<sup>th</sup> December, 2017. Obviously, there is nobody to give consent and the same is dispensed with in accordance with section 159 of the Children Act.

13. Regarding the child's nationality, Article 14(4) of the Children's Act is clear to the extent that, any child below 8 years found within Kenya is deemed to be a Kenyan citizen. South C is within the Kenyan Republic. By dint of that provision, the child is presumed to be a Kenyan by birth.

14. The child herein is a resident within Kenya hence under Section 157 of the Children Act he is qualified to be adopted. Further, considering that the child is over six weeks old, the minimum age recommended for a child to be adopted in compliance with section 156 of the Children's Act, I am satisfied that the child has met all the requirements to be adopted.

15. Concerning the suitability of the applicants to adopt the baby, they are Kenyan citizens thus qualifying the adoption to be a local one in nature. Also, the applicants are aged above 25 years and below 65 years being the age bracket for a potential adoptive parent in compliance with section 158 of the Children's Act.

16. Having been described as financially stable earning a combined monthly income of kshs 189,000, and also owning an apartment in Nairobi, they are capable of providing basic requirements for the child inter alia; education, food, clothing shelter and medical care. They fully understand the consequences of adoption.

17. In a nutshell, it is my finding that the applicants have met the requisite requirements to adopt the baby.

18. Is the adoption in the best interests of the child? The child herein was found inside a bush where he was abandoned. The intention was in my view meant to dispense with the life of a minor then very young by exposing him to predators among them wild animals.

19. He was not meant to live. It is no wonder that nobody has come up to claim him. He needs someone to call dad or mom and loving parents to take care of him. He needs basic provision like food, clothing, shelter, and medical care all of which are available in the hands of the applicants. Pursuant to Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children Act, this court is enjoined to take into account the paramount principle of the best interest of a child.

20. The child has fully bonded with the adoptive family. He has no other known home. He needs protection and care. He is assured of something to inherit. I have no doubt the application herein is in the best interests of the minor. Accordingly, the application is allowed with orders that;

**a. The applicants are hereby authorized to adopt baby T also known as Unknown African baby who shall henceforth be known as ETTM**

**b. The child's date of birth shall be 25<sup>th</sup> December, 2017 and place of birth South C Nairobi Kenya**

**c. The consent of the biological parents is dispensed with.**

**d. The child is declared a Kenyan citizen.**

**e. The registrar General is directed to enter the adoption order in the adopted children's register**

**f. The guardian Ad litem is discharged.**

**g. AMT is hereby appointed legal guardian to the child in the event of any eventuality befalling the applicants.**

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 12<sup>TH</sup> DAY OF MARCH, 2021.**

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**J. N. ONYIEGO**

**JUDGE**