



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION 27 OF 2020

IN THE MATTER OF ADOPTION OF AN ABANDONED UNKNOWN MALE CHILD TP

BKM

JNM.....JOINT APPLICANTS

A N D

LITTLE ANGELS NETWORK.....RESPONDENTS

JUDGMENT

1. BKM and JNM (hereinafter the 1st and 2nd applicants) moved to this court through an originating summons dated 23rd August, 2017 seeking orders that; **they be authorized to adopt a male child TP the abandoned baby also known as Baby TP also known as child; the child be declared a Kenyan citizen by birth; upon adoption the child be known as TTMK; consent required pursuant to Section 159 of the Children Act be dispensed with; MWG be appointed legal guardian of the child and; the Registrar General do enter the adoption in the adopted children's register.**
2. The application is supported by a statement of particulars jointly sworn on 23rd August,2018 by the applicants in which they averred that; they are husband and wife born 31st May,1972 and 6th September,1972 respectively; they are Kenyan citizens hence desirous of adopting the baby herein and that, they solemnized their monogamous marriage on 9th August,2003 at AIC [Particulars withheld] Makueni.
3. The applicants have one biological child one TMK aged 5 years old. They have also adopted one other child known as MNK now 9 years.
4. Regarding their economic status, the first applicant is working at [Particulars withheld]. The second applicant is currently undertaking her Bachelor's degree in Human resource management at Mount Kenya University.
5. Their motivation to adopt the child herein has been prompted by the desire to expand their family following the 2nd applicant's medical condition that led to the removal of her uterus hence cannot get more children. They also have the urge to raise a needy child.
6. Regarding the child, he was abandoned at Ponya Medical clinic Githurai on 26th March 2016. He was estimated to be about 10 days at the time of abandonment. The incident was reported at Githurai Kimbo police station vide OB No 38/26/3/2016. On 29th March, 2016 he was admitted at New Life Home as a child in need of care and protection.
7. On 6th July,2016, the minor was formally committed to New Life home children's home through protection and care case No 133/2016 Nairobi children's court. Every effort to trace the child's parents or close relatives having failed, police department Githurai Kimbo issued a final letter dated 24th October,2016 confirming as such.
8. Six months having expired since the abandonment report, adoption process commenced.
9. Consequently, the baby was declared free for adoption by Change Trust in its case committee sitting held on 8th December, 2016. A declaration certificate S/No. 00186 was issued to that effect. The child was placed under the care and control of the applicants on 14th January, 2017 for a mandatory three months' consecutive period.
10. Upon institution of these proceedings, the applicants sought the appointment of JNW as guardian Ad litem. Pursuant to a chamber summons dated 10th September 2018, the court appointed the said JN as guardian Ad litem on 21st July, 2020. The court further directed that

the director children Services and guardian Ad litem to file an assessment and evaluation report within 14 days.

11. Prior to the hearing, the Director Children Services filed his report dated 15th November, 2020 thus recommending the adoption. The guardian Ad litem also filed hers dated 12th November, 2020 also approving the adoption. On their part, change trust recommended the adoption through its report dated 15th March, 2016.

12. During the hearing, the applicants expressed their desire to adopt the baby. They also appreciate the consequences of adoption and that its permanent.

13. I have considered the application herein, materials in support and the testimony of both applicants. The key issues the court ought to consider are; whether the baby is legally available for adoption; whether the applicants are suitable to adopt the baby and, whether the adoption is in the best interests of the baby.

14. From the record and material presented before this court, the minor was abandoned by her mother. Although it was not very clear on the specific effort made to trace the mother who delivered the child, police department confirmed through their initial and final letter dated 14th October, 2016 that the mother could not be found. Consequently, the need for consent pursuant to section 159 of the Children Act is dispensed with.

15. The child having been found abandoned within the Republic of Kenya, he is presumed to be a Kenyan citizen by dint of Article 14 (4) of the Constitution which provides that; any child below the age of 8 years found abandoned in Kenya whether he was or was not born in Kenya is deemed to be a Kenyan citizen. By powers donated by Article 14 (4), the child is hereby declared a Kenyan citizen.

16. Further, under Section 157 of the Children Act, any child who is a resident in Kenya is capable of being adopted. Considering that the child is over six weeks and below 18 years, he is within the age bracket of an adoptive child courtesy of section 156 of the Children Act. In view of the above, it is my finding that the child is suitable for adoption.

17. Concerning the suitability of the applicants to adopt, they are Kenyan citizens thus qualifying the adoption to be a local one. They are aged above 25 years and below 65 years which is the age bracket for potential adoptive parents in compliance with Section 158 of the Children Act.

18. According to the stake holders' reports, the applicants are financially stable owning several plots located in Kitui, Mombasa and Makueni. They have 2 cars, sacco savings (500,000) and cash in the bank amounting to Kshs 500,000.

19. They are Christians with no criminal record thus an assurance that the baby will benefit from proper moral character and Christian foundation for his proper growth and development as an upright citizen. The child is also assured of provision of basic facilities like food, shelter, clothing education and medical care. It is my holding that the applicants have met the requirements to adopt the baby.

20. As regards the question whether the adoption is in the best interests of the child, the court is duly guided by Article 53 (2) of the Constitution and Section 4 (2) and (3) of the children Act. The two provisions underscore the best interest of a child principle as the paramount consideration in every decision taken or made affecting the welfare of a child.

21. In the instant case, the intended child was found abandoned in a medical facility. Nobody has come up to claim the baby. Since 2017 when he was placed under the care and control of the child, he has fully bonded with the adoptive parent's family. The child has integrated and identified himself with the other children as siblings. He is enjoying every bit of a comfortable life ranging from provision of good shelter, food, clothing, parental love and above all, acquisition of generational identity.

22. Accordingly, I am satisfied that the adoption herein is in the best interests of the minor. To that extent, the application is allowed with orders that;

a. The applicants are hereby authorized to adopt the baby herein known as Abandoned unknown male child known as JP who hence forth shall be known as TTMK

b. That the child's date of birth shall be 15th March, 2016 and place of birth Makueni Kenya.

c. That consent of the biological parents is dispensed with.

d. That the child is presumed to be a Kenyan citizen.

e. That the Registrar General is directed to enter the adoption herein into the adopted children's register.

f. The guardian Ad litem is hereby discharged

g. That MWG be and is hereby appointed as a legal guardian in case of any eventuality befalling the applicants.

DATE, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 12TH DAY OF MARCH 2021

J N ONYIEGO

JUDGE