

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

ADOPTION CAUSE NO. 8 OF 2019

IN THE MATTER OF F (INFANT)

HB)

BMR).....APPLICANTS

RULING

1. I am invited to determine the originating summons dated 29.03.2019 brought under Sections 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 Fredrick (infant)

2. The application is supported by the applicants' joint affidavit and wherein they adopted their statement in support of an application for adoption orders.

3. I have considered the application herein, the annexures thereto and all the documents filed before this court. It is my view that the main issue for determination is whether the application herein is merited.

4. The law on adoption is provided for under the Children's Act and Section 154(1) bestows this court with jurisdiction to make an adoption order. However, for any adoption arrangement to be commenced for the adoption of a child, the said child should be at least six weeks old and should have been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf (section 156). Section 157 requires that the child concerned should have 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. Section 158(1) further requires that in an application for adoption and where there is joint application (as in the instant 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 (2)-(4) provides for further conditions which applicants ought to comply with, in filing the application for adoption which includes 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.

5. In the instant case, the consent to an adoption order in respect of the minor herein sworn on 29.03.2019 by Sr. Teresia Wanjiku Mburu - the Administrator of D.O.E Embu Children's Home indicates that the minor herein was born on 4.01.2007. As such, at the time of the application herein (29.03.2019), the child was more than six (6) weeks old. Further the applicants annexed to their application a certificate declaring a child free for adoption from Bluckner Kenya Adoption Services issued on 17.08.2018. The Applicants averred that the child herein was received in their care and possession on or about 7.10.2018 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. From the annexed copies of the applicants' Identity Cards, it is indicated that they were born in 1965 and 1988 respectively and hence 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 and they are yet to attain the age of sixty-five years. From the records, it is clear that the child herein was found abandoned at [particulars withheld] area Dallas Estate within Embu Township and he was subsequently taken to Embu Children's Home on 4.01.2018 for safe custody and care. There is a letter on record from the OCS- Embu Police Station dated 3.05.2018 to the effect that they launched investigations to trace the mother or relatives of the minor to no avail. As such, the consent by the parents is hereby dispensed with by virtue of Section 159.

6. Considering all the above, the applicants herein have satisfied the conditions for granting of adoption orders as provided for under the Children's Act. The orders sought herein are granted in terms of prayers 2 and 3 of the Originating Summons.

7. It is so ordered.

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

L. NJUGUNA

JUDGE

.....for the Applicants