



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 125 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 I (THE CHILD)

AND

IN THE MATTER OF AN APPLICATION OF ADOPTION BY M N M

JUDGMENT

1. Before this Court is the Originating Summons dated **24th September 2019** by which the Applicant **MNM** seeks the following orders:-

i. THAT the Applicant be authorized to adopt **BABY ISRAEL** a minor who is to be known as **BIM** and the Registrar General be directed to enter the adoption into the Register of Adoptions.

ii. THAT **KMG** be appointed as the Legal Guardian of the minor.

iii. THAT the child be presumed to have been born in Kenya.

2. The Application was canvassed by way of viva voce evidence and parties appeared before Court via the online Platform on **28th January 2021** to give their evidence.

3. The Applicant **MNM** told the Court that she is a widow and has one (1) biological son who is an adult. She expressed her desire to adopt the subject child who is now about **4^{1/2} years old**. The Applicant told the Court that she is a businesswoman and is also a Pastor. That she understands and accepts all the legal implications of an adoption order and undertakes to accord the child all rights due to a biological child including the right to inherit.

4. **PW2 KM** was the biological son of the Applicant. He told the Court that he was aware of and fully supported his mother's intentions to adopt the subject child. **PW2** said he would be very happy to embrace the child as a brother. He confirms that he understood that upon adoption the child would be entitled to all rights due to a biological child including the right to inherit.

5. **PW3 RW** had been approved by the Court as '**Guardian ad Litem**' in this matter. She filed in Court her report dated **30th June 2020** recommending the adoption.

6. **PW4 PERIS KAHARA** was an official from the Adoption Agency **Buckner Kenya**. She confirmed that the Adoption Society filed its Report which is annexed at **pages 25-30** of the Summons.

7. **PW4 MR. EZEKIEL KIMANI** is a Principal Children's Officer. He filed in Court the Report prepared by the Director of Children's Services dated **24th August 2020** recommending the adoption.

ANALYSIS AND DETERMINATION

8. I have carefully considered this application for adoption the various Affidavits and Reports on record as well as the relevant law. 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.”

9. The subject child is believed to have been born on **15th August 2016**. He is now about **4^{1/2} years old** and is above the **six (6) week** age limit set by law. **Buckner Kenya Adoption Society** which is a Registered Adoption Agency have filed in Court the original copy of their Certificate Serial No. **0206** declaring the child known as **'T'** Free for Adoption. Accordingly I am satisfied that all the prerequisite for Adoption have been met.

10. This Court has a duty to analyze the evidence presented to determine whether the Applicant is a suitable adoptive parent for the subject child. The Applicant is a Kenyan citizen as evidenced by the annexed copy of her National Identity Card **No. XXXXXXXX** (see page 1 of the Bundle of Documents filed on **27th September 2019**). The Applicant was married from the year **1988** upto the year **2012** when her husband unfortunately passed away. She has one biological son **KM** born in the year **1989** who is now an adult and is working in **Thika Town**.

11. The Applicant told the Court that aside from being a Minister of the Word, she also runs a Fruit Juice business known as **[particulars withheld] JUICE SUPPLIERS**. The Applicant has annexed at **page 20** of the Summons a copy of the Certificate of Registration for the Business Name issued on **18th April 2017**.

12. The Applicant told the Court that she is a committed Christian and intends to raise the child in the Christian Faith. Indeed the Applicant is a Pastor running a Mission called **[particulars withheld] Glory Ministries**. Annexed at **page 18** of the Summons is a copy of her Certificate of Ordination dated **4th August 2012**. At **page 20** is a copy of the Certificate of Registration dated **16th December 2009** for the said Church. Also at **page 20** of the Summons is a letter dated **15th May 2017** confirming the Ordination of Reverend **MNM**. Thus the Applicant's Christian credentials are not in doubt.

13. The Applicant stated that she is financially secure earning money from her Ministry as well as from her Juice supply business. Her earnings amount to about **Kshs. 200,000/-** per month which is more than enough to provide for the needs of the child. The Applicant has annexed copies of her M-pesa account statement for the **1st April 2019** to **18th September 2019** (see **pages 21-22** of the Summons) as well as copies of Bank Statements in relation to her account held with **GT Bank** (see **page 23** of the Summons). A look at the Applicants financial records reveals that she is financially secure.

14. The Applicant resides in the **Parklands** area of **Nairobi County** in a three bed-roomed house. She was evaluated by a Doctor at **Lang'ata Hospital** and found to be in good mental and physical health. The Applicant has annexed a copy of a Clearance Certificate issued to her by the **Kenya Police Service** on **20th August 2019** indicating that she does not have a criminal record.

16. The Applicant assured the Court that she had informed her son as well as her extended family of her intention to adopt a child and that the family supports her decision. **KM (PW2)** who was the Applicants biological son confirmed that he has supported and welcomed his mother's intention to adopt. As evidence of this support **PW2** has consented to act as a Legal Guardian for the child. **PW2** signed a letter dated **11th May 2017** consenting to the Adoption (**page 4** of the Summons). From the evidence available to this Court I am satisfied that the Applicant is a suitable adoptive parent.

16. The subject child is a male child who is believed to have been born on **15th August 2016**. The child was found abandoned shortly after birth, along a Railway Line within the **Dandora Slums**. A good samaritan rescued the newborn baby and reported the matter at **Dandora Police Station** vide **OB Number 24** of **15th August 2016**. Thereafter on **9th November 2016**, the **Nairobi Children's Court** committed the child to the **Happy Life Children's Home** for Care and Protection. Thereafter vide a Foster Care Agreement dated **20th August 2017** the subject child was placed into the custody and care of the Applicant.

17. **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.”

The subject-child was found abandoned as a new born baby within the **Republic of Kenya**. As such I declare the child to be a citizen of Kenya by birth.

18. 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]

19. The subject-child having been abandoned as a new born has now found a home with the Applicant and her son. Efforts to trace the mother / relatives of the child have borne no fruit. To date no person has come forward to claim the child. A Final Police letter dated **23rd May 2017** written by the Officer Commanding **Dandora Police Station** confirms that the relatives of the child could not be traced. In the

circumstances there is no person from whom consent for this adoption can be sought and / or obtained. Accordingly I waive the need for consent in line with **Section 159(2)** of the **Children Act**.

20. In the circumstances this child would have faced an uncertain future in Children's Homes and institutions. This adoption will grant the child the opportunity to be raised in a stable and loving Christian home. A home visit conducted on **28th July 2020** revealed that the Applicant lives with the child in a spacious and airy three bed-roomed rented house in Parklands. The home was found to be secure and was located near the Aga Khan Hospital. The Applicant has hired a Nanny to help care for the child.

21. The child has been living with the Applicant since **August 2017** to date. I have no doubt that the child has bonded with the Applicant and her family. I was able to interview the child online. He was able to state his name and he confirmed that he is in Nursery School. Evidence of the child's bonding with the family was clear to me as the child sat comfortably on the lap of **PW2** the Applicant's adult son. The child was cheerful and appeared well cared for. The Reports filed by Guardian ad Litem, the Adoption Agency and the Director Children Services all recommend the adoption.

22. The Applicant has appointed her son **KM** and her sister **JWM** as Legal Guardians for the child in the event that she is unable or unavailable to care for the child. The Applicants son **KM** has signed a consent dated **24th September 2019** to act as Legal Guardian. All in all I am satisfied that this Adoption served the best interests of the child. In the premises I do allow the application and make the following orders:-

1. The Applicant **MNM** is authorized to adopt the child known as **BABY I**.
2. Upon adoption the child will be known as **BIM**
3. The child is declared to be a Kenyan citizen by birth.
4. **KMG** is appointed as Legal Guardian for the child.
5. No orders on costs.

Dated in Nairobi this 5th day of March, 2021.

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MAUREEN A. ODERO

JUDGE