



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**ADOPTION 21 OF 2018**

**IN THE MATTER OF ADOPTION OF BABY I Y aka H J**

**BHO**

**JMM.....APPLICANTS**

**VERSUS**

**LITTLE ANGELS NETWORK .....RESPONDENT**

**JUDGMENT**

1. Through an Originating Summons dated 1<sup>st</sup> November, 2018 BHO (hereinafter the 1<sup>st</sup> applicant) and JMM (hereafter the second applicant) moved to this court pursuant to sections 11,154,156,157,158,159,160,163 of the Children Act and Article 14 (4) of the Constitution seeking orders that;

**(1) They be authorized to adopt baby IY aka HJ**

**(2) the said child be declared a Kenyan citizen under Article 14 (4) of the Constitution.**

**(3) The requirement for consent under section 158 of the Children Act be dispensed with.**

**(4) Upon the making of the adoption order SMM be appointed as legal guardian of the child as provided for by Section 164 of the Children Act 2001.**

**(5) Upon the making of the adoption order the Director Children services do enter the adoption in the adopted children's register.**

2. The application is supported by averments contained in the statement jointly sworn by the applicants on 1<sup>st</sup> November, 2018.

3. The applicants are husband and wife who celebrated their marriage on 15<sup>th</sup> August, 2009 at [Particulars withheld] church. They are adult Kenyan citizens by birth born on 17<sup>th</sup> July, 1973 and 20<sup>th</sup> March, 1976 respectively. Due to the 2<sup>nd</sup> applicant's medical complications, she encountered two miscarriages. As a consequence, they have not been able to get any biological child. They do not have any adopted child either. Their motivation to adopt the baby has been prompted by the desire to have a family of their own.

4. Concerning the child, the subject of these proceedings who is estimated to have been born on 31<sup>st</sup> August 2016, he was found having been abandoned at Coast General Hospital after the mother absconded soon after delivery. The matter was reported at Makupa police station where the matter was booked vide OB No. [...].

5. Subsequently, the child was admitted at Baby Life Rescue Center Mombasa on 19<sup>th</sup> October, 2016. On 22<sup>nd</sup> July, 2017 the child was formally committed to the said institution by Tononoka Children's court vide P and C Case No. [...] for a period of 3 years.

6. Every effort by the police to trace the parents and or parents to the child did not bear any fruit. This is confirmed by the Makupa police station's final letter dated 2<sup>nd</sup> June, 2017.

7. Besides the police department, Little Angles Network endeavoured to trace the parents to the baby using telephone contacts given by the mother during admission. Among the contacts given at Coast General Hospital was cell No.[...] for HJ the alleged mother and [...] for MJ the alleged father.

8. Attempts by a senior worker from Little Angles Network to ring the said mother's number could not succeed as it was switched off throughout. Her effort to reach M the purported father yielded some communication but with a denial that he did not have a wife by the name of H nor a newly born child. M denied having had a wife who gave birth around that time. He however refused to meet the officer for further engagement.
9. Several attempts to secure physical contact with M to extract an affidavit signifying his innocence could not succeed as he avoided any physical meeting. The social worker gave several dates when she reached M on phone as; 3<sup>rd</sup> February, 2020, 11<sup>th</sup> February, 2020, 12<sup>th</sup> February, 2020 13<sup>th</sup> February, 2020 and 14<sup>th</sup> October, 2020.
10. Six months having lapsed since the abandonment report, the process of adoption commenced. Through its case committee meeting held on 1<sup>st</sup> September, 2017 Little Angles Network declared the child free for adoption and a certificate S/No. [...] was eventually issued.
11. Upon inception of these proceedings, OW was appointed as guardian Ad litem on 6<sup>th</sup> March, 2019 pursuant to a Chamber Summons dated 1<sup>st</sup> November, 2018. Consequently, the Director Children Services and the guardian Ad litem were directed to file their respective social inquiry reports.
12. Prior to the hearing, the Director Children Services filed his report on 12<sup>th</sup> February, 2021 thus recommending the adoption. Equally, the Little Angles Network filed their report on 3<sup>rd</sup> December, 2020 and one dated 1<sup>st</sup> September, 2017 confirming that they had declared the child free for adoption and that the adoption is in the best interest of the child. The guardian Ad litem also filed his undated report on 4<sup>th</sup> June 2020 approving the adoption.
13. During the hearing, the applicants urged the court to allow the application. They confirmed that they appreciated the consequences of adoption and that it is permanent.
14. Having considered the application, materials in support and various witnesses' testimonies, the court is duty bound to determine whether the child is available for adoption. Whether the applicants are suitable and, whether the adoption is in the best interests of the child.
15. The baby herein was abandoned at Coast General Hospital after delivery. Every effort by Little Angles Adoption Society in tracing the alleged parents as indicated in the birth notification documents through the contact cellphone numbers given did to bear any fruit. The police department Makupa police station through their final letter dated 2<sup>nd</sup> June, 2017 confirmed that nobody had come forward to claim the baby. In the absence of any claimant over the baby, the need for consent under Sections 158 and 159 of the Children's Act is dispensed with.
16. Regarding the child's nationality, the saving provision is Article 14 (4) of the Constitution which recognizes any child below 8 years who is found within Kenya with no known nationality or parents is deemed to be a Kenyan citizen. This is a classic case for such declaration which I hereby do by presuming the child as a Kenyan citizen.
17. Besides the above provision, under Section 157 of the Children Act, any child who is resident in Kenya no matter whether or not born in Kenya is eligible for adoption. The child herein was found abandoned in Kenya hence a resident in Kenya thus available for adoption.
18. The child has since been declared free for adoption and placed as required for a continuous period of 3 months under the care and control of the applicants in compliance with Section 157 of the Children Act. Having been approved as a suitable child for adoption by all stakeholders, I have no doubt but to find him as legally available for adoption.
19. As to the applicant's suitability, they are Kenyan adults aged between 25-63 years being the minimum and maximum age bracket for any potential adoptive parent in compliance with Section 158 of the Children Act. They have been described as financially stable people with the 1<sup>st</sup> applicant working at [Particulars Withheld] as an inspector of works Civil engineering department where he earns Ksh 100,000 per month. The second applicant is working at [Particulars Withheld] company where she earns Ksh 56,000 per month. Socially and morally, they are staunch Christians serving in various roles in the church; have no criminal record; they are responsible, loving and caring.
20. Medically, they are both physically and mentally fit. They also understand the consequences of adoption and that it is permanent. Having fully integrated with the baby and since placement on 6<sup>th</sup> August, 2017 and this being a local adoption, I have no doubt they are suitable to adopt the child.
21. As to the most critical factor for consideration, Article 53 (2) of the Constitution, Section 4 (2) and 3 of the Children Act and Article 3 (1) of the UN Convention on the rights of a child underscores the best interests of a child principle as key in making any decision affecting a child.
22. In the instant case, the child was abandoned and up to now nobody has laid a claim over him. He has no other home other than the applicant's home. He has fully bonded with the applicants and the extended family members. In the applicants hands he is assured of parental guidance, love and care; provision of basic necessities like food, clothing, education, medical care and shelter.
23. Like any other ordinary child, he is entitled to parental guidance and love besides generational identity. In all fairness, the adoption herein is in the best interests of the child. Accordingly, the application is allowed with orders that;

**(1) The applicants are hereby authorized to adopt baby IY aka HJ who thereafter shall be known as IYO.**

**(2) That his date of birth shall be 31<sup>st</sup> August, 2016 and place of birth Mombasa.**

- (3) That consent of the biological parents and or guardian is dispensed with
- (4) That the child is declared to be a Kenyan citizen.
- (5) That the Registrar General do enter this adoption order in the adopted children's register.
- (6) That the guardian Ad litem is discharged.
- (7) That SWMM is hereby appointed as legal guardian in case of any eventuality befalling the applicants.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 18TH DAY OF MAY, 2021**

**J. N. ONYIEGO**

**JUDGE**