



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 162 OF 2019

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001 AND THE ADOPTION RULES

AND

IN THE MATTER OF BABY PR

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

HKM1ST APPLICANT

CJR.....2ND APPLICANT

JUDGMENT

(1) Before Court is the Originating Summons dated **26th November 2019** by which **HKM** (the 1st Applicant) and **CJR** (the 2nd Applicant) seek the following orders:-

- 1. THAT the Applicants HKM and CJR be authorized to adopt BABY PR and that the child be known as CM.**
- 2. THAT the child having been found abandoned at the Hospital gate Thika Level 5 Hospita on 12th September 2017 be presumed to be a Kenyan citizen born on 12th September 2017 in Kiambu County.**
- 3. THAT PKT and CK of Post Office Box Number [....] NAIROBI be appointed Legal Guardians to the child in the event misfortune befalls the Applicants.**
- 4. THAT the Consent of the biological parents be dispensed with.**
- 5. THAT the Registrar-General makes the appropriate entries into the Adopted Children's Register.**

(2) The Summons was supported by the Affidavit of even date sworn by the two Applicants. The Summons was canvassed by way of viva voce evidence on the online platform.

(3) **PW1 CJR** and **PW6 HKM** are a couple who got married to each other in the year **2010**. Their union was blessed with one (1) child a boy who is now aged **seven (7) years**. The couple now wish to adopt the subject child who is a girl-child in order to provide their son with a companion and to complete their family.

(4) The Applicants who are both lawyers confirmed to the Court that they understood the legal implications of an adoption order, that they would accord to the subject-child all the rights due to a biological child including the right to inherit.

(5) **PW2 PN** was an Officer from **Kenya Children's Home Agency** the Adoption Agency that facilitated the adoption. He confirmed that the Agency had filed in Court its Report recommending the Adoption.

(6) **PW3 WK** was the Guardian Ad Litem. She also filed her report recommending the Adoption.

(7) **PW4 WI** an Officer representing the **Director Children's Services** confirmed that they had filed their report dated **4th September 2020**.

ANALYSIS AND DETERMINATION

(8) 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 was born on **12th September 2017** as evidenced by the copy of the Notification of Birth dated **10th October 2017** Serial Number [...] which appears at **page 19** of the Report filed by the Adoption Agency. The child is therefore now aged about **3^{1/2} years** old which is above the six (6) week age limit provided for by the **Act**.

(10) The **Kenya Children's Home Adoption Society** which is a Registered Adoption Agency have annexed to their Report the original copy of their Certificate Serial Number [...] dated **21st November 2018** declaring the child Free for Adoption. Consequently I find that all the legal prerequisites for the making of an Adoption order have been met.

(11) This Court is required to assess the suitability of the Applicants as Adoptive parents for this child. The Applicants are both Kenyan citizens as evidenced by copies of their National Identity Cards which have been annexed to the Summons (Annexures **HKM & CJK '1'**).

(12) The Applicants are a couple who got married to each other on **5th June 2010** at the **Holy Trinity Church in Kericho County**. A copy of their Marriage Certificate Serial No. [...] is annexed to the Summons. Their union has been blessed with one (1) child a son '**KM**' born in **Nairobi** on **8th December 2014**. The Applicants have informed the Court that they are desirous of adopting a child in order to complete their family and in pursuance of their desire to provide a needy child with a home.

(13) The Applicants are both Advocates of the **High Court of Kenya**. The 1st Applicant works at [particulars withheld] whilst the 2nd Applicant works for [particulars withheld]. They have annexed to the Summons copies of their respective payslips as evidence of their monthly earnings (Annexures **CJR 5A and HKM 5**). Aside from their earnings from employment the couple also owns the house in which they reside in **Lavington**. They have annexed a copy of the Title Deed for the house in question being **LR No. [...]**. (Annexure **HKM & CJR'6'**). Altogether the Applicants realize a joint income of approximately **Kshs. 900,000/-** which is more than adequate to provide for the needs of two young children.

(14) The Applicants are both in good physical and mental health and have annexed copies of their medical reports following evaluation by **Dr. Edwards Sang** as evidence of their health status (Annexures **HKM 7**). Additionally the Applicants have annexed copies of Police Clearance Certificates issued by the **Kenya Police Service** (Annexures **HKM 8**) which is proof that they are law abiding citizens.

(15) The Applicants have also annexed recommendation letters dated **22nd November 2017** written by **RDT**, confirming that he knows the couple and endorses their suitability as adoptive parents. From the above it is clear that the Applicants are a couple in a stable marital union who have sufficient resources to provide a good living for the subject-child. The Applicants are not new to parenting as they already have a **seven (7) year** old son whom they have been raising. All in all I am satisfied that the Applicants are suitable parents and qualify to adopt the child in question.

(16) The subject-child is a girl-child who was known as '**PR**'. The child was presumed to have been born on **12th September 2017**. She was abandoned inside the gate of the **Thika Level 5 Hospital**. The child was rescued and admitted at the **New Born Unit** of the said hospital. The abandonment was reported to police vide **Occurrence Book No. [...]**. The **Thika Children's Court** thereafter committed the child to **Macheo Children Home** for Care and Protection. On **31st December 2018** the child was placed in the custody of the Applicants under a Foster Care Arrangement.

(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.”

(18) The subject-child was found abandoned shortly after birth in the **Thika Area of Kiambu County**, within the **Republic of Kenya**. Accordingly I declare that the child is a Kenyan citizen by birth.

(19) Efforts to trace the biological mother/relatives of the child have to date born no fruit. A Final Letter dated **16th October 2018** from the Officer Commanding **Thika Police Station** confirms that no person has come forward to claim the child. As such there exists no known person from whom consent for this adoption can be sought and / or obtained. I therefore waive the requirement for consent in line with **Section 159(1) (a)** of **Children Act**.

(20) 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 interest of the child shall be a primary consideration.” [own emphasis]

(21) The subject-child was abandoned shortly after birth. To date no person has claimed her. At best she faced an uncertain future in Children’s homes or in such like institutions. This adoption allows the child opportunity to be raised in a loving and stable home environment. The child has been living with the Applicants since **December 2018**. I have no doubt that she has bonded with the Applicants and their son. This is the only family she knows. I was able to observe the child online. She sat comfortably and peacefully in the lap of the 2nd Applicant. The child appeared healthy and well cared for. The Applicants have enrolled her at **[particulars withheld] School**, a high cost private school where their elder son is also a student.

(22) A home visit conducted at the Applicants home revealed that they live in **Lavington** an up-market area of the city. The family resides in a spacious five-bedroomed house and each child has their own room. The Applicants have employed two (2) house helps to assist in caring for the children. The neighbourhood was noted to be peaceful and serene and was well served by shopping malls, hospitals and schools.

(23) I am persuaded that this adoption serves the best interests of the child. The **Director Children’s Services**, the **Adoption Agency** as well as the **Guardian Ad Litem** have all filed their reports recommending the Adoption. The couple have appointed as Legal Guardians for the child the 1st Applicant’s brother and his wife. The two guardians have both signed consents (Annexure **HKM & CJR ‘20’**) to signify their willingness to step in and take up the care of the child in the event the Applicants are unable to do so. All in all I have no hesitation in allowing this application.

(24) Accordingly I do make the following orders:-

- 1) The Applicants **HKM** and **CJR** are authorized to adopt **BABY PR**.
- 2) Upon adoption the child will be known as **CM**.
- 3) The child is declared to be a Kenyan citizen by birth.
- 4) **PKT** and **CK** are appointed as the Legal Guardians of the child in the event any misfortune befalls the Applicants.
- 5) The Registrar-General is directed to make the relevant entry in the Adopted Children’s Register.

Dated in **Nairobi** this **14TH** day of **MAY, 2021**.

.....

MAUREEN A. ODERO

JUDGE