



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 124 OF 2019

IN THE MATTER OF:

RD ALIAS BABY GW ALIAS BABY GW.....THE CHILD

AND

EGO.....1ST APPLICANT

JWM.....2ND APPLICANT

JUDGMENT

1. The Originating Summons in respect of this adoption is based on Sections 132 (12), 154, 156(1), 157(1), 158(1) (4) (d), 159(1)(a)(i), (4), (6), (7), 160(1), (2), (3), (4), 161, 163, 164(1) and 170 of the Children Act No. 8 of 2001 and S. 24 of the Interpretation and General Provisions Act, Chapter 2 Laws of Kenya and all enabling provisions of the law. The Originating Summons is dated 24th September 2019 and is brought by EGO and JWM, the Applicants. They are seeking an adoption order in respect of RD Alias Baby GW Alias Baby GW. They pray that:

1. That EGG of P.O Box [...] -00500 Nairobi, in the Republic of Kenya be appointed Guardian Ad Litem (*spent*).
2. That the Director of Children's Department, Ministry of Labour, Social Security and Services investigate the Applicant's fitness to adopt and file a report.
3. That the Applicants be authorized to adopt RD Alias Baby GW Alias Baby GW to be known as AO.
4. That the child be presumed to be a Kenyan Citizen by birth.
5. That the child's date of birth be 25th August 2018 and the place of birth be Kitengela.
6. That the Registrar General be directed to enter the adoption in the Adopted Children Register.
7. That PAO and CRA be appointed Legal Guardians of the child in event of death or incapacity of the Applicants before the child is of age or independent.
8. That the court be pleased to make any further orders it deems necessary.

2. The Originating Summons is supported by a Statement of the Applicants dated 24th September 2019 in which they give the background of the child. They further state that they are Kenyan citizens born on 4th November 1971 and 18th May 1976 respectively (*copies of their National Identity Cards are attached*). They state that they are married, having solemnized their marriage on 8th September 2006 (*copy of marriage certificate is attached*).

3. They state that they have one adopted child OO (*copies of adoption documents are attached*). They state that the 1st Applicant is a Pastor working at Nairobi while the 2nd Applicant is a Project Manager working at [Particulars Withheld] Ltd (*copies of respective payslips to confirm their employment status are attached*). They state that they are financially stable and are able to provide fully for the child and that they are physically and emotionally fit and healthy to parent the child (*copies of medical reports are attached*). They state that they have never been charged nor convicted of a criminal offence or any offence referred to in the Third Schedule of the Children Act 2001 (*copies of certificates of Good Conduct are attached*). They state that they have been assessed by Change Trust Adoption Society and found fit to adopt a child (*copies of Social Inquiry and Home Study Report are attached*).

4. They state that the adoption application has received family support and that they have appointed the 1st Applicant's brother, PAO and his wife CRA to be legal guardians of the child in event of their death or incapacity before the child is of full age or self-reliant (*letter of consent and identification documents of the proposed legal guardians are attached*). They state that they live in a home with comfortable environment which is suitable for nurturing the child and that they have not received or agreed to receive any payment or reward in consideration of the adoption. They state that they have not made any previous application for an adoption in respect of the child.

5. The Applicants have also filed respective Affidavits in support of their application.

6. I have read the pleadings in this matter and all the attached documents the Applicants are relying on in support of their application. The child the subject of these proceedings was born on 25th August 2018 at Kitengela Sub-County Hospital in Kajiado County. Her birth certificate shows that the birth is entry number [...]. The biological mother is GW. She abandoned the child in hospital. The contact, mobile telephone number, she had given was incomplete from the police records and therefore it was not possible to trace her. The matter was reported at Kitengela Police Station and recorded in OB No. xx/xx/x/2018. The police placed the baby at Mahali Pa Maisha Children's Home pending investigation. The matter was taken over by the Children Services. Through Care and Protection Case No. 87 of 2018 at Mavoko Children's Court, the child was committed to Mahali Pa Maisha Children's Court for six (6) months.

7. Police investigations yielded no results as they did not manage to trace the biological mother of the child or any relative. No one went to claim the child. Subsequently, the child was declared free for adoption by Change Trust Adoption Society Case Committee sitting on 20th March 2019. A certificate Serial No. [...] dated 20th March 2018 and a Report to Declare the Child Free for Adoption of the same date were issued to that effect. Change Trust Adoption Society conducted a Social Inquiry and Home Study Report following the application to adopt the child by the Applicants. This report involved home visit. It is a very detailed report capturing all the aspects of the Applicants' life. I note that the findings of the circumstances of the Applicants contained in this report is also captured in the subsequent reports of the Children Services and the Guardian Ad Litem.

8. On 9th July 2020, EGG was appointed by court as Guardian Ad Litem of the child. She was directed to investigate the suitability of the Applicants to adopt the child and file a report within 45 days. Likewise the Department of Children Services was directed to likewise investigate and file a report. Both reports have been filed. That of the Guardian Ad Litem is dated 25th February 2021 and that of the Department, prepared by Winifred Ikinya, a Principal Children's Officer, is dated 11th September 2020. I have read both reports. They agree with the findings that the Applicants are suitable to adopt the child and they so recommend.

9. The reports show that the Applicants do not have biological child or children of their own. They have however adopted one child on 24th August 2018, a boy, known as OO whose date of birth is show as 19th June 2016. The Applicants motivation to adopt the child is their desire to grow their family and give their son OO a sister. They are financially capable of taking care of the child. I have noted that they are both employed and draw comfortable salaries. They live in Apartment xx, Court xxx Nyayo Estate Embakasi in a three bedrooms house. The child, who was placed under the Applicant's foster care on 16th April 2019, shares a bedroom with their first child OO but each child has his/her own bed.

10. The reports filed herein agree and draw the same conclusion that the child is well taken care of, is clean, has settled well with the Applicants and the older sibling and that she has bonded well with the family.

11. After careful reading of the pleadings and all the documents attached to support this application, and after taking into consideration the law supporting adoptions, it is my considered view that the Applicants have the physical, mental and financial capacity to take care of the child. They are in a position to provide her with a loving home, financial, emotional and material support for a happy upbringing. It is my considered view that the child's best interests will be taken into account. They are in their forties in age and this gives them the maturity required to parent the child. This is also not their first adoption. They have the experience to parent an adopted child.

12. The child was abandoned. Her biological mother is at large. She abandoned the child in hospital barely a few days after she was born. Efforts by the police and social services to track the mother or trace any other relatives bore no fruits. No one went to claim the child and this led to the child's being freed for adoption. Under these circumstances, the biological mother's consent or that of her family could not be obtained.

13. I am satisfied that the law and adoption procedure has been followed in this case. Specifically, it is my view that the child's best interests espoused under Article 53 of the Constitution of Kenya 2010 and the Children's Act, 2001 as well as the international Conventions touching on the rights of the Children have been complied with. I am further satisfied that Part XII of the Children Act, 2001 has been complied with. Consequently, I hereby allow this Originating Summons and grant the following orders:

- (i) That the consent of the biological mother of the child is hereby dispensed with.
- (ii) That the Applicants, EGO and JWM, are hereby authorized to adopt the RD Alias Baby GW Alias GW who shall henceforth be known as AO.
- (iii) That the AO shall be presumed to be a Kenyan Citizen by birth.
- (iv) That AO's date of birth shall be 25th August 2018 and her place of birth shall be Kitengela, Kajiado County.
- (v) That the Registrar General is hereby directed to enter this adoption in the Adopted Children Register.
- (vi) That the Director of Immigration is hereby authorized to issue AO with a Kenyan Passport.

(vii) That PAO and CRA are hereby appointed Legal Guardians of AO.

(viii) That EGG is hereby discharged from being Guardian Ad Litem of the child.

Orders shall issue accordingly.

This court thanks everyone, specifically those that carried out social inquiry and prepared the reports, for facilitating this adoption.

DATED, SIGNED AND DELIVERED THIS 6TH MAY 2021.

S. N. MUTUKU

JUDGE