



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO.1 OF 2020
IN THE MATTER OF: THE CHILDREN ACT 2001

AND

IN THE MATTER OF: AN APPLICATION FOR ORDERS OF
ADOPTION OF BABY BNM ALIAS NN (A MINOR)

BETWEEN

BKN.....APPLICANT

AND

BUCKNER KENYA ADOPTION SERVICES.....RESPONDENT

JUDGEMENT

1. The applicant herein moved this honourable court vide an originating summons dated 16th January, 2020 seeking for orders that;
 - a) Pursuant to Article 14(4) of the Constitution of Kenya 2010 and Section 11 of the Children Act, 2001, this honourable court be pleased to declare the child BABY BNM ALIAS NN a Kenyan citizen by birth.
 - b) Pursuant to the provisions of SECTION 159 OF THE CHILDREN'S ACT, 2001, this honourable court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of SECTION 158 OF THE CHILDREN'S ACT, 2001.
 - c) The applicant BKN be authorized to adopt BABY BNM ALIAS NN.
 - d) Upon the making of the adoption order, the child to be known as NN.
 - e) Upon making the adoption order, JMD & DM be appointed legal guardians of the child as provided for by the provisions of SECTION 164 OF THE CHILDREN ACT, 2001.
 - f) Upon making of the adoption order, the Registrar General do make an entry recording the adoption and the estimated date of birth of the child as 4th June, 2017 in the Adopted Children Register as provided for by SECTION 170 OF THE CHILDREN ACT, 2001.
 - g) The costs of this application be costs in the cause.
2. The application is supported by the averments contained in the statement in support thereof sworn on 16th January, 2020. The applicant is an adult Kenyan citizen born in 1975. He is a widower having lost his wife on 24th November, 2018. Prior to the death of his wife they had not been blessed with any child of their own. The motivation to adopt the baby has been ignited by the desire to have a child of his own. Regarding his occupation, the applicant is a businessman who is self-employed.
3. The child herein is said to have been born on 4th June, 2017 at **Kiambu Level 4 Hospital** to **AWN** a single mother who gave him for

adoption. The reason advanced for giving out the baby is that she was single having been abandoned by the father to the baby and that she had two other children hence unable to take care of the third one due to lack of sufficient resources.

4. AWN willingly surrendered the child for placement and gave her final consent on 25th September; 2017. The child was subsequently committed into the legal custody of the **HOUSE OF CHARITY CHILDREN'S HOME** for protection and care vide **Nairobi Children's court Case No.499 of 2017**.

5. Consequently, in its meeting held on **29th September, 2017, Buckner Kenya Adoption Services (BKAS)** declared the child free for adoption and a **Certificate S/No.xxxx** thereof issued.

6. Upon instituting these proceedings, **SMM** was on 16th December, 2020 appointed as guardian ad litem. The Director Children Services and guardian ad litem were directed to file their respective social inquiry reports within 45 days.

7. Preceding the hearing, the Director Children Services through the County Children Coordinator Mombasa County filed his report dated 22nd February, 2021 thus recommending the adoption. Equally, the guardian ad litem filed his report dated 3rd February, 2021 also recommending the adoption.

8. During the hearing, the applicant urged the court to allow the application to enable him adopt the baby. He stated that he understood the consequences of adoption and that it's permanent.

9. I have considered the application herein, materials in support and evidence by various witnesses. My humble duty is to ascertain from the available evidence and material in support whether the baby is available for adoption; whether the applicant is fit to adopt the baby and most importantly, whether the adoption is in the best interests of the child.

10. The subject (baby) is estimated to have been born on 4th June, 2017 at Kiambu Level 4 Hospital to AWN who gave him up for adoption since she had two other children and she did not see the possibility of taking care of the third one due to economic challenges. AWN willingly surrendered the child for placement and gave her final consent on 25th September, 2017 pursuant to Section 158 and 159 of the Children Act. The child was committed into the legal custody of the **HOUSE OF CHARITY CHILDREN'S HOME** for protection and care vide Nairobi Children's Case No.499 Of 2017.

11. On the baby's nationality, it is clear the baby was born in **Kiambu Level 4 Hospital to Kenyan parents** and currently staying with the applicant at Mshomoroni, Mombasa County all within the Republic of Kenya. He is therefore a Kenyan by birth.

12. The child is above 6 weeks and below 18 years which period falls within the age bracket of any adoptive baby pursuant to section 156 of The Children's Act. Further, Section 157 does recognize any child who is resident in Kenya whether born in Kenya or not to be eligible for adoption. I have no doubt the child is suitable for adoption.

13. Concerning the applicants' suitability, he is a Kenyan citizen thus qualifying these proceedings to be a local adoption. The applicant herein is 46 years old which places him under the age bracket of not less than 25 years nor more than 65 years for an adoptive parent in compliance with Section 158 of the Children's Act. The applicant has been described as financially stable being a businessman with various assets as indicated in the Director of Children's Services Report. He is caring, loving and a Christian with no criminal record. Since the placement of the minor into his custody, the child has fully bonded. He also understands the consequences of adoption and that it is permanent. He appreciates the role of a parent and admits he will treat the baby like his biological child.

14. **In re JNA [2018] eKLR, Achode J had this to say, "I have perused the entire record and find that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought".**

In my view, the applicant has met the necessary requirements to adopt the baby.

15. On the question of whether the adoption is in the best interests of the baby, guidance can be drawn from article 53(2) of the Constitution and Section 4(2) and (3) of The Children's Act which underscores the best interests of a child principal as the primary consideration before making any decision concerning a baby. See **IN Re B(BABY)[2018]eKLR** where the court stated that,

"The purpose of Kenya's Constitution and Children Act is to protect and promote the welfare of Children by providing them with stable family units. The fundamental concern therefore in every adoption cause provision is of the best interest of that very child...It is that family unit that the constitution contemplates under Article 45 which also has to take responsibilities in fulfilling the obligations enjoined in Article 53 of the same Constitution."

16. The child herein was surrendered willingly for adoption by her mother AWN. He is like any other child in need of parental care and guidance. He needs basic necessities like food, shelter, education and clothing. He has fully integrated with the applicant. It is my finding that it is in the best interests of the child that this adoption application be allowed.

17. Accordingly, the application is allowed with orders that:

a) The child is hereby declared a Kenyan citizen by birth

- b) The baby's date of birth shall be 4th June 2017 and place of birth Kiambu.
- c) The applicant is authorized to adopt BABY BNM ALIAS NN who shall henceforth be known as NN.
- d) JMD & DM are hereby appointed legal guardians of the minor in the event of any eventuality befalling the applicant.
- e) The Registrar General is directed to enter the adoption in the adopted children's register.
- f) The guardian ad litem is discharged.

Dated, signed and delivered at Mombasa this 18th day of June, 2021

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J.N.ONYIEGO

JUDGE