



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO.2 OF 2019

IN THE MATTER OF: THE CHILDREN ACT NO.8 2001

AND

IN THE MATTER OF: AN APPLICATION FOR ORDERS OF ADOPTION OF BABY AP (MINOR CHILD) BY LMM &GMM

BETWEEN

LMM

GMM.....JOINT APPLICANTS

AND

LITTLE ANGELS NETWORK.....RESPONDENT

JUDGEMENT

1. The joint applicants herein moved this honourable court vide originating summons dated 25th January ,2019 seeking for orders;
 - a) **That PNK holder of National Identity Card Number xxxx residing in Mombasa County and of Post Office Box Number be appointed guardian ad litem.**
 - b) **That LMM AND GMM be authorized to jointly adopt BABY APM (minor child).**
 - c) **That the name of A P to change to APM.**
 - d) **That the child baby A P be declared a Kenyan citizen.**
 - e) **That the Registrar General be directed to enter the name of the child in the Adopted Children Register in the prescribed form.**
 - f) **The costs of this summons be costs in the cause.**
2. The application is supported by the averments contained in the statement in support thereof sworn on 25th January, 2019. The applicants are adult Kenyan citizens born in 1973 and 1975 respectively. They celebrated their marriage at [particulars withheld] Church on 31st August 2002. However, they have not been blessed with any child of their own. The motivation to adopt the baby has been ignited by the desire to have children of their own to make their family complete hence these adoption proceedings. Regarding their occupation, the 1st applicant is a Kenya Navy officer working at [particulars withheld] while the 2nd applicant is a housewife.
3. Concerning the child estimated to be born on 7th November, 2013 at [particulars withheld] to thirty-three-year-old ENM is the second applicant's niece. On 7th November, 2017, ENM willingly visited Little Angels Network with the intention of giving up her child for adoption for the reason that she has been out of job hence not stable enough for her to take care of herself and the children and that her relationship with the father of the subject herein was casual and did not last for long hence she is not aware of his whereabouts. The child has been under the care of the applicants who have played the role of a father and mother since she was young.

4. Consequently, in its meeting held on 27th June 2018, **Little Angels Network** declared the child free for adoption and a **Certificate S/No. xxx** thereof issued.
5. Upon instituting these proceedings, **PNK** was on 17th June, 2019 appointed guardian ad litem. The Children Officer Kisauni Sub County and guardian ad litem were directed to file their respective social inquiry reports within 14 days.
6. Preceding the hearing, the Director Children services through the county children coordinator Mombasa County filed his report dated 27th January 2021 and filed on 13th April, 2021 recommending the adoption. Equally, the guardian ad litem filed her report on 15th December, 2020 recommending the adoption.
7. During the hearing, the applicants urged the court to allow the application to enable them adopt the baby. They stated that they understood the consequences of adoption including the baby's right to inherit their property and that it is permanent.
8. I have considered the application herein, materials in support and evidence by various witnesses. Issues for determination are; whether the baby is available for adoption; whether the applicants are fit to adopt the baby and most importantly; whether the adoption is in the best interests of the child.
9. The baby herein was born on 7th November, 2013 at Kenyatta national hospital in Nairobi and her **Birth Certificate Is Serial No.xxxx**. She was born to thirty-three-year-old **ENM** who is the second applicant's niece. On 7th November,2019 willingly **ENM** visited **Little Angels Network** with the intention of giving up her child for adoption for the reason that she has economic challenges.
10. As per the little Angels network's report dated 27th June, 2018, the child stays with the applicants who are Uncle and Aunt respectively. They have played the role of a father and mother to the baby who has since childhood been under their care. The applicants have been providing school fees and general upkeep for the baby besides offering parental guidance and mentorship.
11. Regarding the baby's nationality, it is clear the baby was born in **Kenyatta National Hospital** to parents who are Kenyan citizens. She is a kenyan by birth.
12. In terms of age, 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 Act. Further, Section 157 OF THE Children Act 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 fit for adoption.
13. Concerning the applicants' suitability, they are Kenyan citizens and this is basically a kinship adoption hence a local adoption as per **Guidelines for Alternative Family Care of Children in Kenya page 161** which states as follows:
- “Kinship or family adoption is adoption by adopters who are kin or relatives within the extended family of the child. Applications for kinship adoption are similar to domestic adoption. A bonding period is necessary where the child has not been living with the prospective adopter.”***
14. The applicants herein are 48 and 46 years respectively which places them under the age bracket of not less than 25 years or more than 65 years for an adoptive parent in compliance with section 158 of the Children's Act. The applicants have been described as financially stable as the 1st applicant is Kenya navy officer and the 2nd applicant a housewife all with an estimated joint monthly income of Kshs 100,000. They are caring, loving and Christians with no criminal record.
15. Since the placement of the minor into their custody the child has fully bonded. They also understand the consequences of adoption and that it is permanent. They appreciate the role of a parent and admit they will treat the baby like their biological child. **In re JNA[2018]EKLR** the court stated that, **“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”**.
- Consequently, I have no doubt that they have met the necessary requirements to adopt the baby.
16. On the question of whether the adoption is in the best interests of the baby, Article 53(2) of the Constitution and Section 4(2) and (3) of the Children's Act underscores the best interests of a child principle as the primary consideration before making any decision concerning a baby.
17. The child herein was surrendered willingly for adoption by her mother ENM after executing necessary consent. She is like any other child in need of parental care and guidance. She needs basic necessities like food, shelter, education and clothing. She has fully integrated with the applicants. Obviously, in the circumstances of this case, the best interests of the child demands that the adoption application be allowed.
18. Accordingly, the application is allowed with orders that:
- a) **The child is declared a Kenyan citizen by birth**
 - b) **The baby's date of birth shall be 7th November 2013**

- c) The applicants are authorized to adopt BABY AP ALIAS A P M who shall henceforth be known as APM.
- d) AM is hereby appointed legal guardian of the minor in the event of any eventuality befalling the applicant.
- e) The Registrar General is directed to enter the adoption order 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

J.N.ONYIEGO

JUDGE