



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO.E3 OF 2020

IN THE MATTER OF: CHILDREN ACT 2001THE

AND

**IN THE MATTER OF: AN APPLICATION FOR ORDERS OF ADOPTION OF BABY BH ALIAS CLZM BY BKM & SS -THE
JOINT APPLICANTS.**

BETWEEN

BKM

SS.....JOINT APPLICANTS

AND

LITTLE ANGELS NETWORK.....RESPONDENT

JUDGEMENT

1. The joint applicants herein moved this honourable court vide an Originating Summons dated 18th November 2020 seeking 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 BABY BH ALIAS CLZM 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 applicants BKM and SS be authorized to adopt BABY BH ALIAS CLZM

d) Upon the making of the adoption order, the child to be known as CLZM.

e) Upon making the adoption order, JSW & RSS 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 12th june,2019 in the Adopted Children's 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 18th November, 2020. The applicants are adult Kenyan citizens born in 1977 and 1978 respectively. They are married to each other and blessed with two children namely, GJI aged 15 years and WFM aged 13years. The motivation to adopt the baby has been ignited by the desire to have a baby girl as they are not able to have another child due to medical conditions. Regarding their occupation, the 1st applicant is a clearing and forwarding agent working at [Particulars withheld] while the 2nd applicant is a security officer working with [Particulars withheld].

3. Regarding the child estimated to be born on 12th June, 2019, she was born to Eighteen-year-old **FL** and Twenty-year-old **DK** who were said to be relatives. On 17th June, 2019, they wilfully surrendered the baby for placement in a children's home for adoption due to the fact that as per the customs of the parents (**FL** and **DK**), a child borne out of an incestuous a relationship cannot be nursed and brought up within the community. On 16th August 2019, **FL** and **DK** together with one **JO** the child's grand-mother signed a consent agreement before Peter Onyango Otieno Advocate thus surrendering the baby for adoption. The child was on 8th August committed into the legal custody of springs of life children's home for protection and care vide **VIHIGA CHILDREN'S CASE NO.58 OF 2019**.

4. Consequently, in its meeting held on 21st August 2019, **LITTLE ANGELS NETWORK** declared the child free for adoption and a **Certificate S/No.[....]** thereof issued. Subsequently, the child was placed under the care and control of the applicants on **2nd September, 2019**.

5. Upon instituting these proceedings, **AWJ** was on 9th December, 2020 appointed guardian ad litem pursuant to Chamber Summons Application dated 18th November, 2020. The Director Children Services and guardian ad litem were directed to file their respective social inquiry reports within 45 days.

6. Preceding the hearing, the Director Children services through the County Children Coordinator Mombasa County filed his report dated 3rd May, 2021 recommending the adoption. Equally, the guardian ad litem filed her report on 20th January, 2021 recommending the adoption.

7. Prior to the hearing, the applicants urged the court to allow the application to enable them adopt the baby. They expressed their appreciation of the consequences of adoption and that it's permanent.

8. 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 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 to Eighteen-year-old **FL** and twenty year old **DK** who were said to be relatives. On 17th June, 2019 they willingly surrendered the baby for placement in a Children's Home due to the fact that as per the customs of the parents of **FL and DK**, a child born of such a relationship cannot be nursed and brought up within the community. They effectively executed necessary consent forms in compliance with Section 158 and 159 of the children Act.

10. Regarding the baby's nationality, it is clear that the baby was born in **Vihiga County Referral Hospital** and later committed to the legal custody of **Springs of Life Children's Home**. Both parents are Kenyans by birth. Effectively the child is a Kenyan by birth.

11. 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 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.

12. Concerning the applicants' suitability, they are Kenyan citizens thus qualifying the adoption to be a local one. The applicants are aged 44 and 43 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 a clearing and forwarding agent with an estimated monthly income of Kshs 200,000 and the 2nd applicant a security officer with [Particulars withheld] with an estimated monthly income of Kshs 90,000.

13. They are caring, loving and Christians with no criminal record. Since 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. I have no doubt that they have met the necessary requirements to adopt the baby.

14. On the question 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 principle as the primary consideration before making any decision concerning a baby.

15. The child herein was surrendered willingly for adoption by her parents **FL** and **DK**. Like any other ordinary child, she is in need of parental care and guidance. She needs basic necessities like food, shelter, education and clothing. She has fully integrated with the applicants. It is in the best interests of the child that this adoption application be allowed. In this regard, I am guided by the holding in the case of **In Re Adoption of EWM (Minor) [2019] eKLR** where the court in a case of similar circumstances allowed the originating summons application on the basis of the best interests of a child.

16. In the case of **In Re MEO (BABY) [2021] eKLR** the court had this to say "it will not be in the best interests of the child to separate him from the adoptive family which has fully bonded with him. The baby has somewhere to call home having been rejected by the community as a bad omen."

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

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

b) **The applicants are authorized to adopt BABY BH ALIAS CLZM who shall henceforth be known as CLZM.**

c) JSW & RSS are hereby appointed legal guardians of the minor in the event of any eventuality befalling the applicant.

d) The Registrar General is directed to enter the adoption order and estimated birth date of the child as 12th June, 2019 in the adopted children's register.

e) The guardian ad litem is discharged.

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

J.N.ONYIEGO

JUDGE