



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO 10 OF 2020

IN THE ADOPTION OF BABY CL.....THE CHILD

BY

NMK 1ST APPLICANT

LWK..... 2ND APPLICANT

JUDGMENT

The Applicants, NMK and LWK, filed this Originating Summons dated 24th January 2020 and filed in court on 28th January 2020 seeking to adopt the child. They have based their application on sections 154, 156, 157(1), 158(1), 159(1)(a)(i), (4), (6), (7), 160, 163, 164 (1), and 170 of the Children Act No. 8 of 2001 and section 24 of the interpretation and General provisions Act, Cap 2 Laws of Kenya. They are seeking the following orders:-

1. That the child be presumed to be a Kenyan citizen by birth.
2. That the Director of Immigration be authorized to issue the child with a Kenyan Passport
3. That the Applicants, NMK and LWK, be authorized to adopt the child to be known as DMW.
4. That PNG. and MKW. of P.O Box [...] be appointed as legal guardians of the child in the event of the death or incapacity of the Applicants before the child is of full age and fully self-reliant.
5. That the Registrar General do make an entry of this adoption in the Adopted Children Register.
6. That the court be pleased to make any further orders it deems necessary.

The Originating Summons is supported by a statement dated 24th January 2020. The Statement explains the history of the child and the reasons behind the Applicants' desire to adopt the child. They also filed an affidavit and several other documents including reports from the Children Services, Guardian Ad litem, Report to declare the child free for adoption from Little Angels Network and other relevant documents including affidavit of the proposed legal guardians giving consent to act as such.

Documents attached to this Application show that the child is estimated to have been born on the 25th December 2017. He was retrieved from a pit latrine by Mr. MW, a nurse at Kitengela Sub-County Hospital, on the 27th December, 2017. He was rushed to hospital and then placed at Merciful Redeemer Children's Home for care and protection. MW reported the matter at Kitengela Police Station where the report was booked under OB Number [...]. The child fell ill on 20th January 2018 and was re-admitted at Kitengela Sub-County Hospital for treatment and later handed over to DM, a volunteer Children's Officer, who placed the child in Mahali Pa Maisha Infant Rescue Centre through recommendation of the police in a letter dated 30th January 2018. At the Centre the child was given the name CL.

The Kitengela Sub-County Children's office vide a letter dated 6th February 2018 to the Senior Principal Magistrate Mavoko, sought committal of the child to Mahali Pa Maisha Children's Home for a period of 1 year. The Mavoko Children committed the child to Mahali Pa Maisha Court on 6th February, 2018, in Care and Protection Case No. 5 of 2018 for a period of 6 months. Through a letter dated 28th June 2018, Kitengela Police Station confirmed that their investigations and efforts to trace the child's parents and relatives had not been successful. Mahali Pa Maisha Infant Rescue Centre confirmed that no one had claimed the infant during the time he was under their care and protection.

Consequently and based on this information the Case Committee at Little Angels Network held a meeting on 28th June, 2018 and declared the child free for adoption. A certificate to declare the child free for adoption Number [.....] was issued to that effect.

The Applicants are Kenyan citizens born on 1st January 1977 and 1974 respectively according to their national Identity Cards attached. They are a monogamous couple married on 17th June 2006 at [Particulars Withheld] Church. The Applicants have one adopted child, JK whose adoption is registered as ACR [...] dated 14th August 2014.

The 1st Applicant is an employee at [Particulars Withheld] Health Limited in Nairobi where she is the head of People and Culture. The second Applicant is the proprietor and Managing director of [Particulars Withheld] Packaging Limited. Both Applicants have attached proof of their current employment status. The 1st Applicant has also attached pay slips from [Particulars Withheld] Health Limited. Both Applicants have been cleared by the Directorate of Criminal investigations from any criminal record through certificates Reference No. [.....] and [.....] respectively both issued in 2019. They were also examined by a medical practitioner who found them to be physically, mentally and emotionally sound.

On 9th July 2020, this court appointed MKK to be the Guardian Ad Litem and directed her to investigate the applicant's suitability in adopting the child and file a report within 45 days. The Department of Children Services was also directed to file a report. Both reports have been filed.

The Guardian Ad Litem's report is dated 13th September 2020. In the report, she indicates that the Applicants' desire to adopt baby CL is noble and that they are a Christian couple who want to ensure that the child is well taken care of and protected. The report also shows that the child has bonded well with his prospective adoptive family, both nuclear and extended and has a loving relationship with the Applicants. Further that the adoptive parents understand the responsibilities of raising an adopted child as they have already adopted another child who is thriving under their care. The report is favourable and recommends the child to be adopted by the Applicants.

The Department of Children Services report is dated 10th September 2020. It is prepared by Nancy Waswa, Principal Children Officer and countersigned by Mary Mbuga, Assistant Director on behalf of the Director Children Services. This report is also favorable and recommends that the Applicants be allowed to adopt Baby CL.

The Applicants have proposed PNG. and MWK. to be appointed the legal guardians of the child. Both have given their consent stating their willingness to act as legal guardians and fully understand what the role entails.

I have read all the pleadings and the supporting documents. I have also read all the reports commissioned in respect of this adoption proceedings and perused the relevant sections of the law on adoptions. It is my opinion that the Applicants fulfil the requirements of the law. They have fostered the child and from the reports the child has settled well with them. He has bonded well with the family and friends of the Applicants and the Applicants have provided a home in which he will grow up protected and loved. The applicants are also financially stable and can provide for the child. In my view, the provisions of the law under sections 154, 156, 157, 158, 159, 160, 163, 164 and 170 of the Children's Act, 2001 Laws of Kenya have been complied with.

Consequently, I hereby allow this Originating Summons and grant the following orders:

- 1. That consent of the biological mother is hereby dispensed with.**
- 2. That the Applicants, NMK and LWK, be authorized to adopt the child to be known as DMW.**
- 3. That the child be presumed to be a Kenyan citizen by birth and his date of birth is presumed to be 25th December 2017 in Kitengela. Kajiado County.**
- 4. That the Registrar General is hereby directed to make an entry of this adoption in the Adopted Children Register**
- 5. That the Director of Immigration be authorized to issue the child with a Kenyan Passport**
- 6. That PNG and MKW of P.O Box [...] be appointed as legal guardians of the child in the event of the death or incapacity of the Applicants before the child is of full age and fully self-reliant.**
- 7. That MKK is discharged from Guardian Ad Litem.**

Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF JUNE 2021.

S. N. MUTUKU

JUDGE