



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE 154 of 2019

IN THE ADOPTION OF

BABY CP.....THE CHILD

BY

GM.....1ST APPLICANT

AND

AKK.....2ND APPLICANT

JUDGMENT

GM and AKK, the Applicants herein, have come to this court through Originating Summons dated 18th November 2019 basing it on sections 154, 156 (1),157 (1),158 (1), 159 (1) (a) (i) (4) (6) (7),160 (1) (2) (3) (4),161,163,164 (1) and 170 of the Children Act, Cap. 21 Laws of Kenya and all enabling provisions of the law. 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 GM and AKK be authorized to adopt the child to be known as JSM.
4. That I GI and EBM be appointed as the legal guardians of the child in the event of the death or incapacity of the Applicant 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 of the Applicants giving the history of the child and the reasons behind their 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 Buckner Kenya Adoption Services and other relevant documents including affidavit of the proposed legal guardians giving consent to act as such.

From the records filed in court, Baby CP was born on 1st October 2017. He was found abandoned and rescued by good Samaritans on 6th October 2017 at Grogon area in Machakos town. The matter was reported at Machakos Police Station and on OB No. [...]. The Sub-County Children’s Officer in Machakos wrote to the Children’s Court in Machakos on 31st October 2017 requesting for committal of the infant at Mahali Pa Maisha Children’s Home for care and protection. The infant was committed to the home on 31st October 2017 for a period of 3 years in Care and Protection Case No. 146 of 2017. Police investigations were conducted and efforts were made to trace the parents or relatives of the infant but yielded no fruits. This was attested to by a letter from the police dated 13th April 2018. Maisha Infant Rescue Centre also confirmed no one claimed the infant during the time he was under their care and protection.

Based on this information and confirming the same to be true, Buckner Kenya Adoption services issued a certificate serial No. [...], declaring the infant free for adoption on 27th April 2018.

The Applicants are a married couple in a monogamous union. Their marriage certificate attached to these pleadings show that their marriage

was solemnized at Victory Faith Christian Centre in Nairobi on 28th August 1999. They are Kenyan citizens and holders of National Identity cards Numbers [...] and [...] respectively and born on 30th August 1968 and 13 December 1975 respectively. The Applicants have four other children namely IM aged 25 years in 2020; JP, adopted, aged 17 years in 2020; CM aged 13 years in 2020 and CPM aged 13 years in 2020. Other than JP who is adopted the other three are biological children of the Applicants. Both IM and JP have given their consent for the adoption.

The 1st Applicant is the proprietor of [particulars withheld]. There is a certificate of incorporation No. CPR/[...] validating the existence of the business. The second Applicant on the other hand is the Chief Custodian of [particulars withheld] Branch in Kenya. Both have attached bank statements confirming their occupation and are financial status. They have also attached documents to show property ownership. The Applicants have been cleared by the Directorate of Criminal Investigations from any criminal record. Further their families are fully supportive of them and the process of adoption. The Applicants live in Kilimani area in a 4 bedroom house as attested by the reports filed. Both applicants have also been examined by a medical practitioner and have been declared to be physically, mentally and emotionally sound.

On the 19th March 2020, this court appointed MWM as Guardian Ad Litem and directed her to investigate the Applicants' suitability in adopting the child and file a report within 45 days. The Department of children services was also ordered to file a report on the same. Both reports have been filed. The Guardian Ad Litem report is dated 26th June 2020 and it shows that the child has fully adopted the home. He is thriving and is well taken care of. He has bonded well with his entire family including the extended family and has a loving relationship with the Applicants. The report is favorable and recommends that the Applicants be allowed to adopt the child.

The Department of Children Services Report is dated 24th June 2020. It is signed by Mary Atati, the Principal Children's Officer and counter-signed by Mary Mbuga, County Coordinator Nairobi. The report is also favorable and recommends adoption. I am satisfied with both reports from the Guardian Ad Litem and the Children Services.

The Applicants have proposed IGI and EBM to be appointed as legal guardians of the child. Both have given their consent stating they are willing to act as legal guardians of baby CP aka Baby JSM.

I have read all the pleadings and the supporting documents. I have also read all the reports commissioned in respect of these adoption proceedings and perused the relevant sections of the law on adoptions. I am satisfied that the Applicants fulfil the requirements of the law. They have fostered the child and from the reports the child has settled well in the home. 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. I am satisfied that 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. It is also my considered view that in allowing this adoption, the child's best interests will be catered for.

I also note that the necessary consent from the biological parents cannot be obtained because their whereabouts is unknown. It is therefore dispensed with.

Consequently, I grant an adoption order and issue the following specific orders:

- 1. That the Consent of the biological mother/parents is hereby dispensed with.**
- 2. That GM and AKK, the Applicants herein are authorized to adopt Baby P.**
- 3. That Baby CP shall be known as JSM.**
- 4. That JSM is presumed to be a Kenya Citizen by birth.**
- 5. That the Registrar General is hereby directed to enter this adoption in the Adopted Children's Register.**
- 6. That the Director of Immigration is hereby authorized to issue JSM with a Kenyan Passport.**
- 7. That IGI and EBM are hereby appointed Legal Guardians of JSM.**
- 8. That MWM is hereby discharged from being Guardian Ad Litem.**

Orders shall issue accordingly.

Dated, signed and delivered this 10th day of June 2021.

S. N. MUTUKU

JUDGE