



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 178 OF 2019

IN THE MATTER OF BABY RB Alias RB Alias ABB Alias AC Alias FC.....THE CHILD

AND

GMN.....1ST APPLICANT

LM M2ND APPLICANT

JUDGMENT

1. GMN and LMM, the Applicants in this Adoption Cause, have filed an Originating Summons dated 19th December 2019 and amended on 5th March 2021 seeking an adoption order. The Originating Summons is anchored on sections 132(12), 154, 156(1), 157(1), 158(1), (4), (d), 159(1)(a)(i), (4), (6), (7), 160 (1), (2), (3), (4), 161, 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 as well as all enabling provisions of the law. They are seeking the following specific orders; -

- 1. That JMN of P.O. BOX [...] NAIROBI, in the Republic of Kenya be appointed as Guardian ad litem (spent).**
- 2. That the Director of Children Services, Ministry of Labour, Social Security and Services investigate the Applicant's fitness to adopt and file a report.**
 - 2A. That the Applicants be authorized to adopt Baby RB alias RB alias Abandoned Baby Boy alias Abandoned Child alias Found Child to be known a RNM.**
- 3. That the child be presumed a Kenyan citizen by birth.**
- 4. That the child's date of birth be 6th May, 2017 and the place of birth be MURANGA SOUTH.**
- 5. That the Registrar General be directed to enter the adoption in the Adopted Children Register.**
- 6. That the director of immigration be authorized to issue the child with a Kenyan passport.**
- 7. That JWM be appointed the legal guardian of the child in the event the death or incapacity of the Applicants before the child is of age or independent.**
- 8. That the Court be pleased to make any further orders it deems necessary.**

2. In support of the Originating Summons, the Applicants have filed a Statement dated 19th December, 2019 together with their Affidavits, explaining that the child was abandoned in [Particulars Withheld] Village, Murang'a South by members of public and the whereabouts of the biological parents is unknown. That the child is estimated to have been born on 6th May, 2017. That the matter was reported at the Murang'a South Sub- County AP Commander Police Station where it was recorded as OB Number 06/4/7/2017. That the Murang'a Sub- County Children's office sought temporary placement for the child at New Life Home Trust Nyeri who then transferred the child to New Life Home Trust -Kilimani. That the matter was brought to Children's Court at Kigumo through Care and Protection Case No. 30 of 2017 and formally committed to New Life Home. That after investigations, the police at Murang'a South Sub-County AP Commander wrote a final letter dated 14th March, 2018, indicating that their efforts to trace the mother or relatives of the child had been fruitless and the child remained unclaimed. That on the 26th October 2018, the child was placed with the applicants for fostering through the foster care agreement between

the Applicants and New Life Home Trust. That consequently, the child was freed by the Kenyans-to-Kenyans Peace Initiative Adoption Agency by their certificate No. xxx dated 13th June, 2018.

3. The Applicants further state that they are Kenyan Citizens born on 21st April, 1974 and 1st January, 1975 respectively. They have attached their National Identity Cards to these pleadings. They state that they have been married since 28th August, 2004 according (*a certificate of marriage is attached*). That they have no biological children. That the 1st Applicant works as a businessman at [particulars withheld] in Babadogo while the 2nd Applicant works as a Manager at [particulars withheld] companies. That they are both financially stable (*copies of 2nd Applicant's Bank statements are attached*). They state that they have been cleared by the police from any criminal records and issued with certificates dated 28th December, 2017 and 3rd January, 2018 respectively and that they have been examined by a medical practitioner and found physically and emotionally fit to adopt the child.

4. This court (Dulu, J) appointed JMN as Guardian *Ad Litem* upon application by the Applicants. The court on 16th July, 2020 directed that the Guardian *Ad Litem* and the Director Department Children Services investigate the suitability of the Applicants to adopt the child and file their respective reports within 45 days. Both reports have been filed and are in the file.

5. The Report by the Guardian *Ad Litem* is dated 20th November, 2020. I have read the report and without repeating the contents of the report, I note that the Guardian *Ad Litem* states that she has known the Applicants over the years and has been socially interacting with them, visiting their home occasionally and socially interacting with them. She states that the child is well settled, well-adjusted and attached to the Applicants with whom he has developed an excellent relationship. She states that the Applicants have demonstrated great parental skills that have greatly benefited the child. She also states that the Applicants are emotionally, mentally and financially ready to take care of the child. She states that the Applicants are fully committed to the child and that they have bonded well as family. She recommends that the Applicants be allowed to adopt the child.

6. The report from the Children Services is dated 10th November 2020. It is prepared by Winfred Ikinya, Principal Children Officer, Nairobi and countersigned by Mary Mbugua, Assistant Director on behalf of the Director Children Services. Likewise the report is positive. It shows that the child is well taken care of, is healthy and well settle and that he has bonded well with the Applicants. It shows that the Applicants are ready mentally, physically and financially to take care of the child. The report recommends that the Applicants be granted the orders sort and be allowed to adopt the child as they have shown their capability to do take care of the child.

7. I have taken time to consider this matter. This is a local adoption made by a married couple. The Applicants do not have a biological child. Both are healthy and financially sound. They own a home where they live with the child. The child is well taken care of. He was found abandoned and his biological mother or father are unknown. Police were not able to trace the biological parents or any other relative. The reports filed by the Guardian *ad litem* and the Children's Services are good reports and portray the child as thriving with health and contentment under the care and protection of the Applicants. They are able to give this child a comfortable home and good life.

8. The child has been freed for adoption and there is nothing adverse about the child's relationship with the Applicants. All the documents attached attest to the conducive environment this child is living in under the care of the Applicants. The Applicants have fulfilled the expectations of **Section 158 of the Children Act (No. 8 of 2001)** in terms of their age.

9. The child was found abandoned at a time when his life was fragile. Efforts by the police to trace the mother or other relatives have born no fruits. It was therefore not possible to obtain consents from the parents or guardians of the child. Under **Section 159 of the Children's Act** this court may dispense with any consent required under the Children Act if satisfied in the case of the parents or guardians of the child, that he has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child provided, *inter alia*, that abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months. In this matter it has been clearly shown through the attached letters from the Murang'a South Sub-County Police Station dated 4th July, 2017 and 14th March, 2018 that the child was abandoned and there are no known biological parents or relatives of the child (see **In the Matter of Baby J K [2013] eKLR**).

10. The Applicants have proposed JWM as legal guardian. She is also sister to the 2nd Applicant. She has consented to being appointed Legal Guardian vide her signed Guardian letter of consent dated 5th December, 2017.

11. The cardinal requirement enshrined in our law under Article 53(2) of the Constitution and Section 4(2) and (3) of the Children's Act is the consideration of the best interest of a child before making any decision affecting the affairs of the child. Considering that the minor was abandoned and the whereabouts of his parents and relatives in unknown, it is the considered view of this court that it will be in the best interest of the child that this adoption will provide the child with a home and loving parents. The principle of the best interest of the child is also recognized under International law and instruments. Under the UN Convention on the Rights of the Child (CRC) that Kenya ratified on 30 July 1990, Article 3 provides that: -

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

12. I am satisfied that the relevant provisions of the Children Act dealing with adoptions have been complied with in this matter. I am satisfied that the Applicants are suited in all aspects to adopt the child. I am satisfied that in the Applicants the child will find love, care and protection befitting a child of his age. He will receive good upbringing and education. His health will also be taken care of. In all this, I am satisfied that his best interest will be of paramount consideration. I have nothing to hold me back in determining this matter in favour of the

Applicants. I therefore proceed to grant an adoption order and issue the following specific orders:

- 1. That GMN and LMM, the Applicants, are hereby authorized to adopt Baby RB alias RB alias ABBoy alias AC alias FC.**
- 2. That Baby RB alias R. B alias ABB alias AC alias FC is to be known as RNM.**
- 3. That RNM is presumed a Kenyan Citizen by birth.**
- 4. That RNM's date of birth shall be 6th May 2017 and his place of birth shall be Murang'a South.**
- 5. That the Director General is hereby directed to enter this adoption in the Adopted Children's Register.**
- 6. That the Director Immigration is hereby authorized to issue RNM with a Kenyan passport.**
- 7. That JWM is hereby appointed the legal guardian of RNM in the event that the Applicants become incapacitated before he attains age of majority or becomes independent.**
- 8. That JMN is discharged from being Guardian Ad Litem.**

Orders shall issue accordingly. This court wishes the Applicants and RNM all the best as they embark on this exciting but demanding journey of parenting.

DATED, SIGNED AND DELIVERED THIS 3RD DAY OF JUNE 2021

S. N. MUTUKU

JUDGE