



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 52 OF 2018
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY AB

BY

AI AND FKM

(APPLICANTS)

JUDGMENT

1. The Applicants AI and FKM are in a monogamous marriage which was solemnized in Meru County on 27th May 2006 as evinced in their Certificate of Marriage Serial No. [...]. They have no children of their own and wish to adopt a female child known as Baby AB through the originating summons dated 26th February, 2018.
2. From the pleadings, the court gathers that the applicant AI is a Police Officer based in North Eastern and FKM is a nurse at [Particulars Withheld] Sub-County Hospital. Their matrimonial home is in Meru County and both profess the Christian faith.
3. The records before the court indicate that the minor was presumably born on 9th November, 2015. She was found abandoned at [Particular Withheld] Farm in Limuru where she was rescued by a Good Samaritan on the same day. The matter was reported at Tigoni Police Station where it was booked as OB No. [...]. The Child was admitted at Tigoni hospital and discharged on 23rd November 2015 and temporarily placed at Limuru Children's Home for care and protection.
4. On 2nd March, 2016 the Senior Principal Magistrate sitting in Limuru vide P & C No. 5 of 2016 committed the child to Limuru Children's Centre. On 16th June, 2016 Tigoni Police Station issued a final letter in which they confirmed that the biological parents of the child could not be traced, nor did anyone come forward to claim the child. On 15th December, 2016 the Applicants took the child in for foster care with a view of adopting. A foster agreement was signed on the same day.
5. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report dated 29th July, 2016. They also issued a Certificate Serial No. [...] dated 29th July, 2016 declaring the child free for adoption. On 28th January, 2020 the guardian ad litem GK filed a report which was favourable and recommended the adoption of the child by the Applicants.
6. An officer from the office of the Director of Children Services conducted home visits and established that the applicants are financially and emotionally capable of providing for the upkeep and education of the child. She filed a report dated 13th December, 2019 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants. That she will gain a family and grow up in a stable home. The Applicants were found to have fulfilled the statutory requirements for adoption.
7. This is a local adoption and from the record the Applicants have fulfilled all the legal requirements relating to the adoption of the child. The consent of the biological parents was dispensed with since the child was abandoned at infancy and the parents could not be traced to give the consent. The child who is now 5 years old was present virtually in court during the hearing. She appeared lively and interacted well with the Applicant, with whom she appeared to have bonded.
8. I also note that the 1st applicant was born on 30th December, 1972 and is 48 years old while the 2nd applicant was born on 20th November, 1974 and is therefore 45 years old. They are therefore within the age limit bracket eligible to adopt being joint adults having attained the age of twenty-five years and are at least twenty-one years older than the child but have not attained the age of sixty-five years as provided by **Section 158 (1) (a)** of the Children's Act No. 8 of 2011.
9. From the foregoing, this court is of the considered view that it is in the best interest of the child to be adopted by the Applicants. Reasons

wherefore, I allow the prayers sought in the Originating Summons dated 26th February, 2018 as follows:

- i.** The Applicants Antony Ikunda and Faith Kanyua Mutwiri be and are hereby allowed to adopt **Baby AB** who shall henceforth be known as **RBNI**
- ii.** Her date of birth shall be presumed to be 9th November, 2015. She is presumed to have been born in Kenya in accordance with Article **14(4)** of the **Constitution**, and the place of birth shall be Nairobi.
- iii.** RMK and LMM are hereby appointed as the legal guardians in the event that the Applicants die, or are incapacitated by ill health.
- iv.** The Registrar General is directed to enter this Order in the Adopted Children's Register.
- v.** The Director of Immigration is hereby authorised to issue the child with a Kenyan Passport.
- vi.** The guardian ad litem is hereby discharged.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 8TH DAY OF JULY, 2021.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Applicants