



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 24 OF 2020

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION

OF A BABY MW ALIAS AG ALIAS AG ALIAS AG

BY

FL AND BMM

(APPLICANTS)

JUDGMENT

1. The Applicants FL and BMM are in a monogamous marriage which was solemnized at the Registrar's Office in Nairobi on 12th February 2010. They have one child of their own who was born on 4th March 2008. They wish to adopt a female child known as Baby MW alias AG alias AG alias AG through the amended originating summons dated 7th June, 2021.
2. From the pleadings, the court gathers that the applicant FL is self-employed as an events and entertainment manager and BMM is self-employed as a caterer. They reside in Kilimani area, off Ndemi road in Nairobi. The prospective father professes the Islamic faith while the prospective mother is a Christian.
3. The records before the court indicate that the minor was born on 21st December, 2017 at Pumwani Maternity Hospital and was found abandoned at the Hospital on the same day. The matter was reported to Shauri Moyo Police Station vide OB Number [xxxx]. The Kamukunji Sub-County Children's Officer was informed and on 9th January 2018, the child was temporarily placed at the House of Charity Children's Home.
4. On 14th March 2018, the Senior Resident Magistrate sitting in Nairobi committed the child vide P & C 27 of 2018 to House of Charity Children's Home. On 27th June 2018 the Officer Commanding Station Shauri Moyo issued a final letter confirming that the biological parents of the child were not traced, nor did anyone come forward to claim the child. On 3rd August, 2018 the Applicants took the child for purposes of foster care with a view of adopting her. A foster agreement was signed on the same day.
5. Prior to the hearing of the adoption application, Change Trust prepared and filed a report dated 21st July 2018. They also issued a Certificate Serial No. [xxxx] declaring the child free for adoption. The guardian ad litem GMM 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 4th February 2021 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants. That she gains a stable home, a sibling and that the Applicants have fulfilled the statutory requirements.
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 was in Court during the hearing and appeared to be free and have bonded well with the Applicants.
8. I also note that the 1st applicant was born on 18th December, 1977 and is 43 years old while the 2nd applicant was born on 23rd September, 1982 and is therefore 38 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. I have examined the evidence herein against the litmus test of the best interest of the child as required in Article 53 (2) of the Constitution and Section 4 (2) & (3) of the Children’s Act. Consequently my considered view is 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 amended Originating Summons dated 7th June, 2021 and Order as follows:

- i. The Applicants FL and BMM be and are hereby allowed to adopt **Baby MW alias AG alias AG alias AG** who shall henceforth be known as **YIL**

- ii. Her date of birth shall be presumed to be 21st December, 2017. 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. JNL is hereby appointed the legal guardian 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 Registry.

- 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