



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

ADOPTION CAUSE NO. 3 OF 2019

IN THE MATTER OF ADOPTION OF BABY AS alias GNS

JSM & GKS.....APPLICANTS

JUDGEMENT

Brief facts

1. The applicants have brought an Originating Summons dated 23rd August 2019 under **Sections 158 and 170 of the Children Act**, seeking for orders

- i. To adopt baby AS
- ii. To rename her GNS
- iii. The court dispense with the consent of the minor who was left abandoned at Mlolongo Township, and
- iv. That the Registrar General be directed to make an entry in the Adopted Children Register.

The Applicants' Case

2. Baby AS was found abandoned by her mother at Mlolongo Township on 10th January 2018 and was rescued by a good samaritan taken to Mlolongo Police Station where the incident was reported vide OB No. xxxx. Baby AS was taken to Mahali Pa Maisha Children's Home and thereafter given up for adoption in Mavoko Children's Court Case No. 2 of 2018 on 17th September 2018. The minor was placed under the care of the applicants on 3rd December 2018 and the applicants have been her foster parents for the last three(3) years.

3. The applicants state that they are husband and wife aged 51 and 47 years respectively and have been married since 7th July 2001 and that this is the second adoption they are involved in having applied for adoption of a child with Little Angels Network Adoption Society. The relevant consents and reports were filed. One WMN and his wife LWM were appointed guardians ad litem.

4. The evidence of the guardian ad litem is that the applicants have taken care of the minor since she was 11 months that they have taken good care and have affection love for her. It was further stated that the applicants have the means and income to bring up the minor and are desirous of providing for the minor and creating the environment of a loving home. Moreover, it is stated that the applicants have previously adopted a baby JJM who is currently 7 years old and he is eager to have a sister. Further state that the applicants have shown willingness to take care of the minor and it would be in the best interests of the child to be adopted by the applicants.

Issues for determination

5. The main issue for determination is whether the applicants have satisfied the legal requirements under the Children's Act to be granted the adoption order.

The Law

6. The preliminary requirements for the making of an adoption order are set out in **Section 156(1) of the Children's Act** which provides as follows:-

No arrangement shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free or adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.

7. Thus for an adoption order to ensure the following ought to be taken into consideration:-

- a) A child must be at least six (6) weeks old and free for adoption;
- b) The child concerned must have been in the continuous care and control of the applicant within Kenya for a period of three (3) consecutive months preceding the filing of adoption proceedings.
- c) Both the child and the applicant have been evaluated and assessed by a registered adoption society in Kenya.

8. In these proceedings, the minor was abandoned a fact confirmed by the police at Mlolongo Police Station vide a letter dated 10th January 2018 and booked on Occurrence Book No. xxxx. Similarly, a letter by Sub County Children's Officer dated 15th January 2018 and a report by Little Angels Network dated 31st October 2018 as well as a Certificate to Declare a Child Free for Adoption dated 31st October 2018 and a report by the children's Officer to the High Court dated 11th January 2021, the abandonment of Baby AS is reiterated and confirmed. Evidently, neither the police nor the institution to whom the committal for care and protection were given, have received a claim for the child. As such, legal abandonment may be presumed pursuant to **Section 159(1)(a)(i) of the Children Act** which provides:-

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.

9. Having confirmed that the minor has been abandoned in law, the requirement of consent of the biological parents is hereby dispensed with as required under **Section 158(4)(a-f) of the Children Act**.

10. Notably, the Department of Children's Services in its report requested by the court recommended the applicants for the adoption of the child. It has been established that the applicants have taken the child to their home for the last one year. There is evidence on record that the applicants have the financial capability to take care of the child; that their home environment is safe secure as well as satisfactory; that the child is relating well with the applicants and that the applicants have not received or agreed to receive any reward in consideration for the adoption.

11. It is my considered view that the applicants have complied with all the requirements of the law for purposes of adoption and that it is in the best interests of the child that the applicants be permitted to adopt the child. Accordingly, the Originating Summons dated 23rd August 2019 is allowed in the following terms:-

- a) That the applicants are hereby authorised to adopt Baby AS who is hereby renamed Baby GNS.
- b) That the consent of the biological parents is hereby dispensed with.
- c) That the Registrar General do make the necessary entry in the Adoption of Children Register

12. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 11TH DAY OF NOVEMBER 2021.

F. MUCHEMI

JUDGE

Judgement delivered through video link this 11th day of November 2021