



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ADOPTION CAUSE NO. E025 OF 2021**

**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY JH**

**BY**

**NKC AND FC (APPLICANTS)**

**JUDGMENT**

1. The Applicants NKC and FC are in a monogamous marriage under Kalenjin Customary Law since 15<sup>th</sup> August, 2015 which was thereafter solemnized at the Office of the Registrar of Marriages on 19<sup>th</sup> September, 2018. A Certificate of Marriage of serial number XXXX is on record. They have no child of their own. They wish to adopt the child known as Baby JH, a minor of the female sex through the Originating Summons dated 11<sup>th</sup> March, 2021.

2. From the pleadings, the court gathers that the male Applicant is a [particulars withheld], affiliate of the University of California while the female Applicant is a nurse by profession and currently employed at [particulars withheld]. They reside in a three-bedroom rental house in Nyayo Estate, Embakasi and both profess the Christian faith.

3. The child who is the subject of this adoption was found abandoned in Kawangware in Nairobi on 11<sup>th</sup> April, 2019. The child was rescued by one Mary Wamaitha, a voluntary Children's Officer upon being notified of the abandoned child by a good Samaritan. The child was approximately three weeks old at the time. Mary reported the matter reported to Muthangari Police Station where it was recorded vide OB. No. XXXX/04/2019. The child was referred to Hope House Babies Home - Nairobi where she was admitted for further care and protection. Vide a letter dated 24<sup>th</sup> July, 2019 the Embakasi Sub-County Children's Office recommended that the child be committed to the Home. Consequently, on 14<sup>th</sup> August, 2019 the child was committed to the care and custody of the home by the Children's Court at Nairobi vide P&C Case No. XXX/2019.

4. The Officer Commanding Station (OCS), Muthangari Police Station had issued an initial letter dated 11<sup>th</sup> April, 2019 stating that the child had been abandoned and was in need of care and protection. The OCS issued a final letter dated 28<sup>th</sup> October, 2019, in which he stated that no one had come forward to claim the child and efforts to trace her kin were unsuccessful. On 23<sup>rd</sup> December, 2019 the Applicants took the child into foster care with a view of adopting upon signing a Care Agreement. Since then, the child has been in the continuous care and custody of the Applicants.

5. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated 14<sup>th</sup> May, 2021 in which it is stated that they had verified all the information and documents provided and were satisfied that they related to the subject child. The KKPI Adoption Society had issued a Certificate of Serial No. XXX dated 31<sup>st</sup> October, 2019 declaring the child free for adoption. The guardian ad litem JN filed a report dated 5<sup>th</sup> July, 2021 which was favorable and recommended the adoption of the child by the Applicants for reasons that they were a loving, protective and warm family and had shown parental commitment and willingness to give the child a stable, safe and loving home.

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 up keep and education of the child. She prepared and filed a report dated 9<sup>th</sup> August, 2021 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants as opposed to living all her life in an institution as an abandoned child. Further that the Applicants have met all the legal requirements for adoption as provided under the **Children Act No. 8 of 2001**.

7. It is important to note that the orders sought by the Applicants herein relate to a child. In any matter concerning a child, the best interests of the child are of paramount importance as provided for under **Article 53(2)** of the **Constitution** and amplified by **section 4(3)** of the **Children Act**.

8. This is a local adoption and the Applicants, in my opinion, have fulfilled the requirements for a local adoption under the **Children Act**. The Applicants are aged 34 and 29 years respectively, having been born on 6<sup>th</sup> January, 1987 and 4<sup>th</sup> March, 1992. They are therefore within the age bracket eligible to adopt as provided under **section 158(1)** of the **Children Act**. I am convinced that the Applicants also meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter.

9. The child was present during the virtual hearing and appeared to have bonded well with the Applicants. She was calm and was observed to be in good health and in good spirits. Additionally, the evidence on record demonstrates that the child has flourished under the care of the Applicants.

10. 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 Applicants' family members are aware of the proposed adoption and support it.

11. MC, a sister to the female applicant, has consented to be appointed as legal guardian in the event that the Applicants are incapacitated and cannot care for the child. A 'Consent to Act as Legal Guardian' duly sworn by herself on 9<sup>th</sup> March, 2021 is on record.

12. After a careful assessment of the reports filed herein, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants who appear to be a warm and loving family. Consequently, I allow the prayers sought in the Originating Summons dated 11<sup>th</sup> March, 2021 and order as follows:

- i. The Applicants, NKC and FC are hereby allowed to adopt **Baby JH** who shall henceforth be known as **NC**.
- ii. Her date of birth shall be presumed to be 15<sup>th</sup> March, 2019. 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. Mercy Chelangat is hereby appointed legal guardian of the child 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 Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem be and is hereby discharged.

It is so ordered.

**DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2021.**

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**L. A. ACHODE**

**HIGH COURT JUDGE**