



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. E084 OF 2021

IN THE MATTER OF BABY I (JM)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

DNI1ST APPLICANT

JWN.....2ND APPLICANT

JUDGMENT

1. Before this Court is the *ex parte* originating summons dated 15th July 2021 by which the Applicants seek the following orders:-

- “1. THAT the applicants, DNI and JWN, be allowed to adopt the child currently identified as BABY I a.k.a. J M.**
- 2. THAT henceforth, the child be renamed as LDI.**
- 3. THAT the child’s date and place of birth be declared to be 5th February 2020 at Kitengela.**
- 4. THAT the child be presumed to be a Kenyan Citizen by birth; and consequently entitled to all the rights and benefits in respect thereof.**
- 5. THAT consent of the child’s biological parents/guardians be dispensed with.**
- 6. THAT SMM and AWK be appointed as Legal Guardians of the child, in the event that the Applicants herein are incapacitated or in any way unable to discharge their parental obligations.**
- 7. SPENT.**
- 8. THAT the Registrar General be directed to make the appropriate entries in the Adopted Children’s Register.**
- 9. THAT this court do issue such further orders as are in the interest of justice.”**

2. The Application was supported by the Applicants statement of even date including all annexures thereto. The application was canvassed by way of oral evidence on the online platform.

3. The Applicants are a couple who got married to each other in 2006. Their union has not yet been blessed with a child. The Applicants in a desire to complete their family wish to adopt a child.

4. Both Applicants confirm that they understand the legal implications of an adoption order. They undertake to accord to the Subject child all rights and privileges due to a biological child including the right of inheritance.

ANALYSIS AND DETERMINATION

5. The prerequisites for an Adoption order are set in **Section 156(1)** of the **Children's Act 2001**, which provides as follow: -

“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”

6. The Subject child is believed to have been born on **5th February 2020**. He is therefore now **1 ½ years** old and is above the **six (6) year** age limit provided for in law.

7. **Buckner Kenya Adoption Agency** which is a **Registered Adoption Agency** have annexed to their report a certificate Serial No. **xxx** dated **13th November 2020** declaring the child Free For Adoption. Accordingly, I am satisfied that all the prerequisites for an adoption order have been met.

8. The duty of this court is to analyze the evidence adduced before it to determine whether the Applicants are suitable adoptive parents. The Applicants are both Kenyan Citizens as proved by the copies of their National Identity Cards annexed to the summons (Annexures **'DN 3(a)'** and **'DN3 (b)'**).

9. As stated earlier the Applicants are a couple who solemnized their marriage at **[particulars withheld]** in **Nairobi** on **9th December 2006**. They have annexed a copy of their Marriage Certificate Serial No. **xxxx** (Annexure **DN '5'**). Their union has not been blessed with any offspring hence the desire to adopt a child in order to complete their family. The Applicants stated that they were also motivated to adopt by their love for children and their desire to provide a needy child with a home.

10. The Applicants are both committed Christians and intend to raise the child in the Christian Faith. They are Congregants at **[particulars withheld]** where the 1st Applicant is a **Lay Reader** and the 2nd Applicant is also involved in **Ministry**. They have annexed a letter of recommendation dated **7th November 2020** written by **VCJM** who is the **Vicar** of the Church which the couple attends (Annexure **'DN4'**).

11. The Applicants are both in paid employment. The 1st Applicant is a Lecturer at **[particulars withheld]** whilst the 2nd Applicant is a Lecturer at **[particulars withheld]**. They have annexed copies of their payslips as well as copies of their Bank Statements from **Co-operative Bank** and **Kenya Commercial Bank** (Annexure **'DN7 a'** to **'DN7 b'**). The couple have also annexed a copy of a Title Deed to property which they own in **Kajiado County ('xxxx')**.

12. From the above it is clear that the Applicants are financially secure. Their joint monthly income is approximately **Kshs500,000/-** which is more than sufficient to provide for the needs of a growing child.

13. The Applicants were both examined by a Doctor and were both found to be physically and mentally fit. Copies of their Medical Reports have been annexed (Annexure **xx – xx'** and **'xx-xx'**). The Applicants have also annexed copies of their clearance certificate issued by the **Kenya Police Service** as evidence that neither has a criminal record (Annexures **'xxx and xx'**).

14. The Applicants told the court that they have informed their extended family of their intention to adopt the minor. That the family are very supportive and have already welcomed the child with open arms. Annexed to the summons is a letter dated **26th October 2020** written by **SN** a brother to the 2nd Applicant recommending the Applicants as adoptive parents (Annexure **'DN – 11'**). Another letter dated **11th November 2020**, written by family friends **Mr and Mrs JK** confirms that the Applicants circle of family and friends are all supportive of their intention to adopt the minor.

15. The Applicants have appointed as Legal Guardian **SMM** and **A WK**.

16. From the material availed, this court is satisfied that the Applicants are suitable adoptive parents who have a genuine desire to adopt the minor.

17. The Subject child is believed to have been born on **5th February 2020**. A few days after his birth on **9th February 2020**, the child's mother handed him to a lady in the Outpatient Department at **Kitengela Sub-County Hospital** claiming that she was going to the washroom. The mother never came back for her child. The Good Samaritan reported the abandonment to the hospital authorities. The baby was admitted for a general checkup and care.

18. The abandonment was reported at **Kitengela Police Station** vide OB Number **xx** of **x/xx/xxxx** on **9th February 2020**. Thereafter the minor was committed by the **Kajiado Childrens Court** to **Mahali pa Maisha Rescue Centre** for care and protection. On **12th March 2021** the baby was placed into the custody of the Applicants under a **Foster Care Agreement**.

19. This is a child who was abandoned shortly after his birth. Efforts to trace his biological mother and/or other relatives have borne no fruit. The Good Samaritan who was left with the child informed the Adoption Agency that the mother has never come back to reclaim her child. A final Police Letter dated **18th February 2010** advises that no person has come forward to claim the child.

20. In the circumstances, there is no known person from whom consent for this adoption can be sought and/or obtained. Accordingly, I waive the requirement for consent in line with **Section 158 (4)** of the **Children Act, 2001**.

21. **Article 14** of the **Constitution of Kenya, 2010** deals with the question of Citizenship. **Article 14(4)** provides as follows: -

“(4) A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.”

22. Given that the minor was abandoned in Kenya aged barely **one (1) week** old I declare him to be a Kenyan Citizen by birth.

23. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest of the said child. **Section 4(2)** of the **Children Act 2001** provides:-

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”. (Own emphasis).

24. The Subject child was abandoned shortly after his birth. He faced an uncertain future in Childrens homes and other similar institutions. This adoption allows the child the opportunity to be raised in a loving and stable home environment. I have perused the reports prepared by the **Adoption Agency, the Guardian Ad Litem** and the **Director Childrens Services**. All three reports are positive and all recommend the adoption.

25. A home visit was conducted by the Childrens Officer. The Applicants were found to be living in a spacious four bed roomed house in **[particulars withheld]**. The house belongs to the Applicants and is within a large compound with enough space for the child to run and play when he is of age. The Applicants have employed a nanny to assist in the care for the child.

26. I was able to see the child online. He was a healthy baby who was comfortable in the arms of the 2nd Applicant. I note that the child has been living with the Applicants since **March 2021**. I have no doubt that he has bonded with them and that he recognizes the Applicants as his parents. I am of the view that the adoption will serve the best interests of the child. Accordingly, I allow this summons and make the following orders: -

(1) The Applicants DNI and JWN, are authorized to adopt the child known as BABY I a.ka. JM.

(2) Upon adoption the child shall be known as LDI.

(3) The child is presumed to be a Kenyan Citizen by birth and is entitled to all the rights and benefits in respect thereof.

(4) The Registrar General is directed to make the relevant entries in the Adopted Children Register.

(5) SMM and AWK are hereby appointed as the Legal Guardians for the child.

DATED IN NAIROBI THIS 3RD DAY OF DECEMBER 2021.

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MAUREEN A. ODERO

JUDGE