



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. E076 OF 2021 (O.S.)

IN THE MATTER OF THE CHILDREN ACT 2001

IN THE MATTER OF JM (THE CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY:

BMM..... 1ST APPLICANT

LMK.....2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated 24th June 2021 by which the Applicant sought the following orders: -

“1. THAT the Applicants be authorized to adopt the child;

BABY JM who is presumed to be a Kenyan Citizen, born on the 17th day of February 2020.

2. THAT JMS & JKN of Kenyan National Identify Card Numbers xxxx and xxxx respectively be appointed as legal guardians of BABY JM.

3. THAT The Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate do issue by the Registrar of Births and Deaths.”

2. The Application is supported by the statement of even date sworn by the Applicants. The summons was heard by way of *vive voce* evidence on the online platform.

3. The Applicants are a couple who got married to each other under customary law in the year 2015. Their union has not been blessed with any child. The Applicants now wish to adopt a girl child in order to complete their family.

4. The Applicants confirm to the court that they both understand the legal implications of an adoption order. They undertake to accord to the Subject child all the rights and privileges due to a biological child.

ANALYSIS AND DETERMINATION

5. I have carefully considered the summons before this court, the evidence adduced in court as well as all the documents and reports filed in the matter. The prerequisites for an adoption order are set out in **section 156(1)** of the **Children’s Act 2001** which provides as follows: -

“159(1) No arrangements shall be commenced for the adoption of a child unless the child is at least six (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 was born on **17th February 2020**. Annexed to the summons is a copy of the minor's Birth Certificate Serial No. **xxxx (Annexure BLK "1")**. The child is therefore now aged about **1 ½** years and is above the **six (6)** week age limit provided for in law.
7. **Buckner Kenya Adoption Services**, a registered Adoption Agency have annexed a copy of their certificate dated **13th November 2020**, Serial Number **0396** declaring the child Free For Adoption. I am therefore satisfied that all the legal prerequisites for an adoption order have been met.
8. The duty of this court is to assess the suitability of the Applicants as adoptive parents. The Applicants are both Kenyan Citizens as evidenced by the copies of their National Identify Cards – (Annexures '**BLK-2**'). As stated earlier the Applicants are a married couple. They initially entered into a customary marriage but later solemnized their union at the **Registrars Office** on **30th May 2019**. A copy of the marriage certificate Serial No. **402120** is annexed to the summons. (Annexure '**BLK 2A**').
9. The Applicants are both gainfully employed. The 1st Applicant works as a **Mechanical Engineer** with [**Particulars Withheld**]. He has annexed copies of his pay slips (Annexure '**BLK-3**') as proof of his employment. The 2nd Applicants works as a **Loan Officer** with [**Particulars Withheld**]. She has also annexed copies of her pay slips ('**BLK-3**'). The Applicants realize a joint monthly income of approximately **Kshs 500,000** which is sufficient to enable them provide for the needs of the minor. The applicants have annexed copies of their Bank Statements which indicate that they are financially stable.
10. The Applicants are both Christians and intend to raise the child in the Christian Faith. Both Applicants were examined by a doctor and both were found to be physically and mentally fit. The Applicants have both annexed copies of **Clearance Certificates** issued to them by the **Kenya Police Service** proving that neither has a criminal record.
11. Finally the Applicants have appointed as legal Guardians for the minor, the parents of the 2nd Applicant. The said legal Guardians **JMS** and **JKN** have both sworn an Affidavit dated **24th June 2021** confirming their willingness to step in as legal Guardians in the event the Applicants become unable or are unavailable to care for the child. They have also signed the consent dated **19th August 2019** (Annexure '**BLK-10**').
12. The Applicants have explained that they are motivated to adopt the minor in order to complete their family and based on their desire to provide a needy child with a home. In my assessment, the Applicants are suitable to adoptive parents.
13. The Subject child was born on **17th February 2020**. The child was abandoned at birth within **Ruiru Market** in **Kiambu County**. The child was rescued by a Good Samaritan and the matter was reported at **Ruiru Police Station** vide **OB Number 83** of **17th February 2020**.
14. On **18th February 2020** the **Kiambu Children's Court** committed the baby to **New Life Home Trust** for care and protection. Thereafter on **13th November 2020** the child was released into the custody of the Applicants under a **Foster Care Agreement**.
15. **Article 14** of the **Constituent 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.”**
16. Given that the Subject child was found abandoned at birth in **Ruiru** in the **Republic of Kenya** I do declare the child to be a Kenyan Citizen by birth.
17. Efforts by police to trace the biological mother of the child have borne no fruit. A Final Police letter dated **20th August 2020** from **Ruiru Police Station** confirms that the child's biological mother has not been traced and that no person has come forward to claim the child. In the circumstances, there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with **Section 159(1)(a)** of the **Children Act 2001**.
18. 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).
19. The Subject child was abandoned at birth. At best she faced an uncertain future in Childrens Homes and other similar Institutions. This adoption accords the child the opportunity to be raised in a stable and loving 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.
20. A home visit was conducted by the Childrens Officer. The Applicants were found to be residing in their own home in **Utawala Estate**. The house was a spacious three-bedroom bungalow with modern facilities and with adequate provision for the baby. The Applicants have engaged a nanny to help in the care of the minor.
21. I was able to see the child online. She was a happy healthy baby and was obviously very comfortable in the arms of the 2nd Applicant. I

have no doubt that the child has bonded with the Applicants and views them as her parents.

22. Based on the foregoing I find that this adoption serves the best interests of the child. Accordingly, I do allow this summons and make the following orders:-

(1) The Applicants BMM and LMK are authorized to adopt the child known as BABY JM.

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

(3) The child is declared to be a Kenyan Citizen by birth and is entitled to all the rights and benefits under the Constitution of Kenya and all applicable laws.

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

(5) JMS and JKN are appointed as the legal Guardians of the child.

Dated in **Nairobi** this **3rd** day of **December 2021**.

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MAUREEN A. ODERO

JUDGE