



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**ADOPTION CAUSE NO. 006 OF 2020**

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

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF D ALIAS BABY BOY (THE CHILD)**

**BY**

**JK AND BM M'M (APPLICANTS)**

**JUDGMENT**

1. The Applicants JK and BMM are in a monogamous marriage which was solemnized at the Registrar's office in Nairobi on 29<sup>th</sup> October 2014. JK has one biological child from a previous relationship but BMM' has no biological children. They wish to adopt a male child known as D alias Baby boy through originating Summons dated 14<sup>th</sup> February 2020.
2. From the pleadings, the court gathers that both Applicants are employed by different institutions in Nairobi. They reside in [particulars withheld] in Syokimau, Machakos County and both profess the Christian faith.
3. The records before the court indicate that the child in this matter was on 2<sup>nd</sup> May 2018 at St Mary's Hospital as evinced by a Birth Notification serial No. xxxx. The baby was willfully surrendered to the Nest Children's Home on 3<sup>rd</sup> May 2018 by his mother.
4. On 13<sup>th</sup> June 2018, the children's court Nairobi committed the child vide p & C 224 of 2018 to The Nest Children's Home. Subsequently on 13<sup>th</sup> June 2018, his biological mother NA signed the final consent for adoption. On 3<sup>rd</sup> February 2020 MHR, the child's biological father, also signed a final consent for the adoption of baby D. On 12<sup>th</sup> September 2018 the Applicants took the child for the purpose of foster care with a view of adopting him. A foster care agreement was signed on the same day.
5. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report dated 27<sup>th</sup> June 2018 declaring the child free for adoption. The Court appointed LNM as guardian ad litem in this cause on 6<sup>th</sup> May 2021. She subsequently filed a report dated 14<sup>th</sup> July 2021, which was favorable and recommended the adoption of the minor by the Applicants.
6. An officer from the office of the Director of Children's Services conducted home visits and established that the Applicants are financially and emotionally capable of providing for the upkeep and education of the minor. She filed a report dated 11<sup>th</sup> June 2021 recommending the adoption for reasons that the child stands to benefit from the opportunities provided by becoming a child of the Applicants. That he will gain a family and grow up in a stable home. The Applicants were found to have fulfilled the statutory requirements for adoption.
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. There is on record 2 affidavits of consent of both biological parents of the child sworn on separate dates, NA and MHR on 13<sup>th</sup> June 2018 and 3<sup>rd</sup> February 2020 respectively. In their affidavits they indicate that they agree that the best way forward was to offer the child to a family that would adequately care for him since they were each not financially stable. The implication of their decision was explained to both of them individually, after which they duly signed certificates of acknowledgement as a confirmation of their understanding of the memorandum.
8. The child who is now 3 years old was present virtually in court during the hearing and appeared to have bonded well with the Applicants. The applicants appeared warm towards the child and the child appeared to be free with them.
9. I also note that the 1<sup>st</sup> Applicant was born on 1<sup>st</sup> September 1973 and is 48 years old while the 2<sup>nd</sup> Applicant was born on 16<sup>th</sup> August 1972 and is 49 years old. They are therefore within the age limit eligible to adopt being an adult having attained the age of twenty-five years and are at least 21 years older than the child but have not attained the age of sixty-five years as provided by Section 158(1) of the Children's

Act No. 8 of 2011.

10. Consequently, and guided by the provisions of **Article 53 of the Constitution** and **Section 4** of the Children's Act on the paramount consideration in matters concerning children, 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 originating summons dated 14<sup>th</sup> February 2020 and order as follows:

- i. The Applicants JK and BMM' be and are hereby allowed to adopt D alias Baby boy who shall henceforth be known as BDK (the child).
- ii. His date of birth is 2<sup>nd</sup> May 2018 and the place of birth is Nairobi as evidenced in the Birth Notification serial No. xxxx.
- iii. PDO and FKO are hereby appointed as legal guardians in the event that the Applicants die, or is incapacitated by ill health.
- iv. The Registrar General is directed to enter this order in the Adopted children's Register.
- v. The Director of Immigration is hereby authorized to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 2<sup>ND</sup> DAY OF DECEMBER, 2021**

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**L.A. ACHODE**

**HIGH COURT JUDGE**