



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

ADOPTION CAUSE NO.E002 OF 2020

IN THE MATTER OF BABY J (INFANT)

WNM & MKK.....APPLICANTS

JUDGMENT

1. Before me is the originating summons dated 16.09.2020 and brought under Sections 157 (1) and 158(1) of the Children's Act and Rules 4 and 14 of the Adoption Rules and seeking for orders;-

i.spent.....

ii. That the consent of the infant's natural parents be dispensed with.

iii. That the applicants be authorized to adopt James (infant).

2. The application is supported by the applicants' joint affidavit and wherein they adopted their statement in support of the application for adoption orders.

3. I have considered the application herein, the annexure thereto and all the documents filed before this court. It is my view that the main issue for determination is whether the application herein is merited.

4. The law on adoption is under the Children's Act and section 154(1) bestows this court with jurisdiction to make an adoption order. However, for any adoption arrangement to be commenced, the said child should be at least six weeks old and should have been declared free for adoption by a registered adoption society in accordance with the rules prescribed in the Children's Act.

5. Section 157 requires that the child in question should have been in the continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicants may be evaluated and assessed by a registered adoption society in Kenya. Section 158(1) further requires that in an application for adoption and where there is joint application (as in the instant case);

(a) at least one of the joint applicants must have attained the age of twenty-five years and at least twenty-one years older than the child but has not attained the age of sixty-five years; or

(b) is a relative of the child; or

(c) is the mother or father of the child.

6. Section 158 (2) - (4) provides for further conditions which the applicants ought to comply with, which includes consent by the parents. However, section 159 gives this court the powers to dispense with the said consent in the case of the parents or guardian of a child that has been abandoned, neglected, persistently failed to maintain or persistently ill-treated the child.

7. In the instant case, the consent to an adoption order in respect of the minor herein sworn on 16.09.2020 by Sr. Teresia Wanjiku Mburu-the Administrator of D.O.E Embu Children's Home, indicates that the minor herein was born on 10.02.2013. As such, at the time of the application herein (16.09.2020), the child was more than six (6) weeks old. Further, the applicants annexed to their application a certificate of declaring a child free for adoption from KKPI Adoption Society.

8. The Applicants averred that the child herein was received in their care and possession on or about 31.12.2014 and thus he had been in the continuous care and control of the applicants for a period of six (6) months preceding the filing of the application. From the annexed copies of the applicants' Identity Cards, it is indicated that they were both born in 1969 and hence at the time of the application both of them had attained the age of twenty-five years and at least twenty-one years older than the child and they are yet to attain the age of sixty-five years.

9. Further, from the record, it is clear that the child herein was found abandoned along Manyatta – Embu road opposite Rianjagi coffee factory on 21.10.2013 and that he was subsequently taken to Embu Children’s Home. There is a letter on record from the OCS, Manyatta Police Station dated 11.11.2013 to the effect that thorough investigations were launched to trace the mother or relatives of the minor to no avail. As such, the consent by the parents is hereby dispensed with by virtue of section 159.

10. Considering all the above, it is my view that the applicants herein have satisfied the conditions for grant of adoption orders as provided for under the Children’s Act.

11. In view of the above:

i. The consent of the infant’s natural parents is hereby dispensed with.

ii. The applicants are allowed to adopt the infant herein.

12. It is ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 1ST DAY OF DECEMBER, 2021.

L. NJUGUNA

JUDGE

.....for the Applicant