



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

ADOPTION CAUSE NO. 9 OF 2019

IN THE MATTER OF THE CHILDREN ACT 8 OF 2001

AND

IN THE MATTER OF BABY R

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY:

HMM)

PNM).....APPLICANTS

RULING

1. The adoption order was sought vide two applications. The first application is brought by way of Ex-parte chamber Summons under Section 1A, 1B and 3A of the Civil Procedure Act, Sections 4, 19 and 160(1), (2) and (4) of the Children Act No 8 of 2001 and all other enabling provisions of the Law. It is dated 26.4 2019. The Applicants seek the following orders:

1. **THAT** NNN holder of identity card number XXXX and resident in [Particulars withheld] Machakos Town within the Republic of Kenya be appointed Guardian ad Litem in this cause.
2. **THAT** the Director of Children's Department, Ministry of Labour and Social Services do investigate the applicants fitness to adopt or otherwise and file a report in respect thereof.

2. The Second application is brought by way of Ex-parte originating Summons under Section 4, 154, 156(1), 157 (1) (a) and 4(a), 159 (4), (6), (7) and (8)(a), 160 (1), (2) and (4), 162, 163, 164(1) and 170 of the Children Act No 8 of 2001, Section 24 of the Interpretation and General Provisions Act, Chapter 2, Section 9 of the Kenya Citizenship and Immigration Act No. 12 of 2011, the Constitution of Kenya 2010 and all other enabling provisions of the Law. It is dated 26.4.2019. The Applicants seek the following orders

1. **THAT** the Applicants HMM AND PNM be authorized to adopt the child currently identified and known as BABY R.
2. **THAT** the child be renamed as RMM.
3. **THAT** the child be presumed to be a Kenyan Citizen and as a consequence be entitled to the rights and benefits of a Kenyan Citizen, including being issued with a Kenyan passport whenever desired.
4. **THAT** the Registrar General makes the appropriate entries in the Adopted Children Register
5. **THAT** FMM be deemed to be the appointed Legal Guardian in respect of the child.
6. **THAT** the court do issue such further orders as are in the interest of justice.

3. In the preliminary stage the first application was allowed by the court.

4. According to a report filed in court on 21.8.2019 by Kenya Children Homes, the Applicants **HMM AND PNM** were married in 1988 accordance with Kamba customs and solemnized their marriage at the Registrar's Office on 13.2.2018. The report indicated that the minor was born to an incestuous relationship on 2.12.2014 recorded on entry number [xxxx] and that MNM indicated that she wanted to give out the child for adoption. The report indicated that the child was left at Ongata Rongai police station and recorded vide Occurrence Book [xxxx]. It also indicated that the minor was taken to Fatima Maternity Hospital and later admitted to Thomas Barnado House on 29.1.2015 as a child in need of care and protection. The report indicated that child was committed to Thomas Barnado House at the Nairobi Children Court on 15th May, 2015 vide P&C Case 101 of 2015. It was reported that the Ongata Rongai Police Station confirmed that since birth, the mother of the child never came to claim back her child and that the mother was later traced and who gave consent to adoption vide affidavit deposed on 15.11.2018. It was reported that the minor was freed for adoption by the Kenya Children Homes Adoption case Committee on its sitting of 21st November, 2018 and a freeing certificate No. [xxxx] issued under Section 156(1) of the Children Act.

5. According to the applicants' affidavit dated 20.4. 2019, they had never been convicted of a criminal offence as per the attached police clearance. They sought to adopt the minor whom they have fostered since 20.6.2018 and averred that they have not received any form of payment in consideration for the adoption. They stated that FM had consented to the adoption and accepted to be the legal guardian of the minor.

6. **FMM** swore an affidavit dated 7.5.2019 to confirm consent to act as Legal Guardian.

7. On 18.7.2019 this court directed the Director of Children Services to conduct investigations as to the suitability of the Applicants to adopt **R-MINOR** and submit a report and findings to Court.

8. Emily Kimanzi is the Sub-County Children's Officer, Machakos. She conducted a social inquiry on the Applicants by interrogating them and visiting them at their home on 23.8.2019. It was observed that the applicants have three daughters and seek to have an heir to their estate. The minor seemed to have bonded well with the applicants and their daughter who has agreed to be legal guardian to the child. Her conclusion is that the applicants have demonstrated ability to maintain R-MINOR. She appeared before me on 23.10.2019 to seek that her report be adopted in the instant proceedings.

9. On 23.10.19, Pauline Kitema appeared in court to recommend the applicants' application and to confirm the suitability of the applicants to adopt the minor as well as adopt the report dated 8.7.19 and filed on 21.8.19 to be adopted. FMM and NNN appeared before me on 23.10.2019 to confirm and rely on the contents of their affidavits and willingness to take up thier duties as well as recommend the applicants to adopt R-MINOR. The applicants also appeared before me on the same day and relied on their affidavits to support the application and indicated willingness to adopt and cater for the needs of the minor.

10. This court is satisfied that the Applicants are suitable persons to adopt R-MINOR and that they are financially stable and have the means to provide and care for him. They have lived with the minor for a considerable period and bonded well with him. The baby has known them as his parents and knows no other. I also find that it is in the best interests of the child to allow the application.

For the above reasons, the court orders as follows;

1. **THAT the Applicants be and are hereby authorized to adopt R-MINOR and the baby be known as RMM.**
2. **THAT FMM be and is hereby appointed Legal Guardian of the minor.**
3. **THAT the Registrar-General do make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.**
4. **THAT the Guardian Ad Litem is hereby discharged.**

Dated and delivered at Machakos this 6th day of February, 2020.

D.K. Kemei

Judge