



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 20 OF 2019

IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2011

AND

IN THE MATTER OF BABY EA AKA A MALE BABY CHILD

BY

WKM AND IMK (APPLICANTS)

JUDGMENT

1. The Applicants WKM and IMK are in a monogamous marriage under Kamba Customary Law since 11th May, 2003 which was thereafter solemnized at the Office of the Registrar of Marriages on 7th August, 2018. They have no child of their own. They wish to adopt the male child known as Baby EA aka A Male Baby Child through the Originating Summons dated 19th February, 2019.
2. From the pleadings the court gathers that the male Applicant is a businessman with a focus in the real estate industry and owns his own registered business by the name of Capstone properties based in Nairobi, while the female Applicant is a business woman involved in clothing design and tailoring. They reside in a one bedroom rental house in Roysambu area, Nairobi and both profess the Christian faith.
3. The child who is the subject of this adoption was found abandoned near a dam at Ndimu area, Elburgon in Nakuru on 5th July, 2017. The child was rescued by a Good Samaritan, a form four student, who then took the baby to her elder brother. The child was delivered into the care of Elburgon Sub-County Hospital and the matter reported to Elburgon Police Station where it was recorded vide OB. No. [Particulars Withheld] The child was referred to New Life Home Trust – Nakuru where he was admitted for further care and protection.
4. On 6th July, 2016 the child was committed to the care of New Life Home Trust - Nakuru by the Children's Court at Molo vide P&C Case No. 67/2016. The OCS Elburgon Police Station issued a final letter dated 10th January, 2017 in which he confirmed that no one had come forward to claim the child and attempts to trace his kin had proved futile. On 28th September, 2018 the Applicants took the child into foster care with a view of adopting upon signing a Foster Care Agreement. Since then the child has been in the continuous care and custody of the Applicants.
5. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report dated 7th May, 2019. The KKPI Adoption Society had issued a Certificate of Serial No. 573 dated 22nd February, 2017 declaring the child free for adoption. The guardian ad litem CWK filed a report on 30th May, 2019 which was favorable and recommended the adoption of the child by the Applicants for reasons that they had shown parental commitment and willingness to give the child a permanent, safe and loving home.
6. An officer from the office of the Director of Children Services conducted home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child. She prepared and filed a report dated 30th July, 2019 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the son of the Applicants as opposed to living all his life in an institution as an abandoned child. Further that the Applicants have met all the requirements in the statute.
7. It is important to note that the orders sought by the Applicants herein relate to a child. In any matter concerning a child, the best interests of the child are what is of paramount importance as provided for under **Article 53(2)** of the **Constitution** and amplified by **section 4(3)** of the **Children Act No. 8 of 2001**.

8. This is a local adoption and the Applicants, in my opinion have fulfilled the requirements for a local adoption under the **Children Act, 2001**. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. I am convinced that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought.

9. The consent of the biological parents was dispensed with since the child was abandoned at infancy and the parents could not be traced to give the consent. The Applicants' family members are aware of the proposed adoption and support it.

10. KM, a brother to the male applicant, and his wife WWK, by a joint affidavit sworn on 19th February, 2019 consented to be appointed as legal guardians in the event that the Applicants are incapacitated and cannot care for the child.

11. After a careful assessment of the reports filed herein and from the observation of the interaction of the Applicants and the child during the hearing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants who appear to be a loving and warm family.

12. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 19th February, 2019 and order as follows:

i. The Applicants, WKM and IMK are hereby allowed to adopt **Baby EA aka A Male Baby Child** who shall henceforth be known as **IMK**.

ii. His date of birth shall be presumed to be 5th July, 2016. He is presumed to have been born in Kenya in accordance with **Article 14(4)** of the **Constitution**, and the place of birth shall be Elburgon, Nakuru.

iii. KM and WWK are hereby appointed legal guardians of the child in the event that the Applicants die, or are incapacitated by ill-health.

iv. The Registrar General is directed to enter this order in the Adoption Register.

v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.

vi. The guardian ad litem be and is hereby discharged.

It is so ordered.

DATED SIGNED and DELIVERED in open court this 3rd day of **March, 2020**.

L. A. ACHODE

HIGH COURT JUDGE