



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 80 OF 2019

IN THE MATTER OF MN a.k.a Q B

POL.....1<sup>ST</sup> APPLICANT

MBAO.....2<sup>ND</sup> APPLICANT

JUDGMENT

1. Vide an exparte Originating Summons dated 11<sup>th</sup> June 2019, POL and MBAO herein referred to as the 1<sup>st</sup> and 2<sup>nd</sup> applicants respectively sought orders as follows;

- i) **That the applicants be allowed to adopt the child currently identified as Baby MN a.k.a QB;**
- ii) **That Henceforth the child be renamed as AJAL;**
- iii) **That the Child's date of birth be declared to be 14<sup>th</sup> April 2015 and her place of birth be declared to be Ruiru Kiambu;**
- iv) **That the child be presumed to be a Kenyan citizen by birth;**
- v) **That consent of the child's biological parents/guardians be dispensed with;**
- vi) **That the guardian *ad litem* be discharged;**
- vii) **That SBO be appointed as legal guardian of the child;**
- viii) **That the Registrar General be directed to make the appropriate entries in the adopted children's register; and**
- ix) **That this court do issue such further orders as are in the interest of the child.**

2. The application is supported by a joint statement of particulars and several annexures thereof. The applicants who are both Engineers by profession are husband and wife working with [particulars withheld] and [particulars withheld] respectively. They have been blessed with two biological children namely; NL born on 11<sup>th</sup> August 2011 and JAL born on 11<sup>th</sup> December 2013.

3. Their motive to adopt the baby herein is hinged on the desire to expand their family, to offer a needy child a home full of love and make a difference in her life.

4. Regarding the subject herein estimated to have been born on 14/4/2015, she was allegedly rescued from an elderly lady by the name of Wangari Waweru who was said to be over 70 years at the time. That curious neighbours who knew that Wangari was not the biological mother, reported to the Children office Ruiru who moved with speed to rescue the girl from the elderly lady.

5. Subsequently, the Children Officer reported the issue to Ruiru Police Station vide O.B No. [...]. The subject known as MN at the time of rescue was then admitted to New Life Trust where she was given another name (QB).

6. Despite every effort by the Police to trace the parents and or relatives to the child, the same was futile. On 6<sup>th</sup> October 2016, the child was formally committed to New Life Home Trust vide **Thika Children's Protection and Care Case No. 246/2016**. A visit by the Children Officer and the police on the elderly lady from whom the child was rescued seeking to ascertain the source of the child did not bear fruit either.

7. Having failed to trace any known relative by the relevant authorities, the children Office vide its letter dated 14<sup>th</sup> March 2018 informed the New Life Home Trust to proceed with alternative arrangements for protection and care of the child. The baby remained in the said home till 28<sup>th</sup> April 2018. Through a case committee held by Buckner Kenya Adoption Services (BKAS) on 29<sup>th</sup> March 2018, the child was declared free for adoption vide Certificate S/No. [...]. Subsequently, the child was placed under the care and control of the applicants on 28<sup>th</sup> April 2018.

8. Upon filing these proceedings, JN was appointed guardian *ad litem* on 18<sup>th</sup> March 2019 pursuant to an *ex parte* Chamber Summons dated 11<sup>th</sup> June 2019. Consequently, the Director Children Services was directed to file an assessment and valuation report within 45 days. In compliance with the said directive, a report dated 15<sup>th</sup> August 2019 was filed thus recommending the adoption. Equally, the guardian *ad litem* filed his social enquiry report dated 19<sup>th</sup> August 2019 also recommending the report. Similarly, Buckner Kenya compiled its report dated 16<sup>th</sup> July 2019 thus recommending the adoption.

9. Both stakeholders described the applicants as being financially stable, staunch Christians with no criminal records, respectable, loving and caring, medically, socially and morally fit. During the hearing, the applicants besieged the court to grant their application. They acknowledged that they understood the consequences of the adoption and that it was permanent.

10. I have considered the application herein, supporting documents, testimonies by the applicants and stake holders' report. Issues that stand out for consideration are;

**i) Whether the child herein is available for adoption;**

**ii) Whether the applicants are suitable to adopt the baby;**

**iii) Whether the adoption is in the best interest of the child.**

11. The minor herein who is the subject of these proceedings was rescued from an elderly lady aged over 70 years who could not explain how she came to stay with the baby. Neighbours who were curious made a report to the police. As evidenced from the first police report dated 19<sup>th</sup> November 2015 and final letter dated 13<sup>th</sup> June 2016, nobody showed up claiming the baby.

12. Pursuant to Article 14(4) of the Constitution, any 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 Kenyan citizen by birth. Consequently, the child is presumed to be a Kenyan who is a resident of Kenya and therefore qualified to be adopted pursuant to Section 157 of the Children's Act.

13. The minor has been declared free for adoption and has since been placed under the mandatory three months continuous care and control of the applicants. It is my finding that the child is qualified and is available for adoption.

14. Concerning the applicants' suitability, they are aged 40 and 35 years respectively. They are Kenyan citizens, financially stable, socially, medically, mentally and physically fit to adopt the baby. On the age aspect, pursuant to Section 156 of the Children's Act, they are below 65 years and above the minimum recommended age of 25 years with an age difference of 21 years with the baby.

15. They have understood the consequences of the adoption and that its permanent. Since placement, they have fully bonded with the baby whom they fondly refer to as their daughter. They have also been found suitable by all stake holders. I have no doubt the applicants have met the requisite conditions to adopt the baby.

16. Touching on the best interest of the baby, this is the cornerstone of any adoption proceedings. As stipulated under Article 53(2) of the Constitution and Section 4(2) and 3 of the Children's Act, the cardinal principle in any decision making process affecting children is the best interests of a child.

17. The baby was rescued from an environment full of uncertainty. No relative has laid claim over her. She has fully integrated with the applicants since placement. The child has already adopted a brotherly connection with the applicants' other children who regard her as a sister. The child is assured of parental guidance, education, food, shelter, clothing and medical care. She is entitled to mentorship, generational identity and a bright future with something to inherit. In the circumstances, it is my holding that the adoption herein is in the best interest of the child.

18. Having satisfied the requisite legal requirements, I am satisfied that the applicants have successfully persuaded this court to grant their prayers which I hereby do by making orders as follows;

**a) That the applicants herein be and are hereby authorized to adopt baby MN a.k.a QB henceforth to be known as AJAL;**

**b) That the child's birth day shall be 14<sup>th</sup> April 2015 and place of birth Ruiru Kiambu County;**

**c) That the child be and is hereby presumed to be a Kenya citizen;**

**d) That consent of the children's biological parents is dispensed with;**

**e) That the Registrar General be and is hereby directed to enter the adoption herein into the adopted children's register;**

f) That the guardian *ad litem* is hereby discharged;

g) That SB a sister to POL be and is hereby appointed legal guardian in the event of any eventuality and or incapacitation befalling the applicants.

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 9<sup>th</sup> DAY OF April 2020.

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J. N. ONYIEGO

JUDGE