



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 123 OF 2019

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

AND

IN THE MATTER OF ADOPTION OF BABY JJ A.K.A. BABY S A.K.A A UNKNOWN CHILD A.K.A BABY J A.K.A A BABY BOY (THE CHILD)

BY

JWK AND MGW (APPLICANTS)

JUDGMENT

1. The Applicants JWK and MGW are in a monogamous marriage which was solemnized at [particulars withheld] Church in Kiambu County on 20th November, 2004. A Certificate of Marriage of serial number [xxxx] is on the record. They have been blessed with one biological child (GKW) who was born on 15th September, 2006. They wish to adopt the male child known as Baby JJ a.k.a S a.k.a Baby S a.k.a A Unknown Child a.k.a Baby Jason a.k.a A Baby Boy through the Originating Summons dated 29th August, 2019.
2. From the pleadings, the court gathers that both the male and female Applicant are business persons who operate a General Shop at [particulars withheld]. They reside in a two bedroom rental house in [particulars withheld] area, Kiambu County and both profess the Christian faith.
3. The child who is the subject of this adoption was found abandoned along [particulars withheld] Road in Thuthuriki village, Githunguri location on 20th October, 2017. The child was rescued by Good Samaritans, FW and DMM who reported the matter to Githunguri Police Station where it was recorded vide OB. No. 28/20/10/2017. The child was referred to Limuru Children's Centre for care and protection.
4. On 25th May, 2018 the child was committed to the care of Limuru Children's Centre by the Children's Court at Githunguri vide P&C Case No. 12/2017. The OCS Githunguri Police Station issued a final letter dated 31st January, 2019 in which he confirmed that no one had come forward to claim the child and attempts to trace his kin had proved futile. On 5th April, 2019 the Applicants took the child into foster care with a view of adopting upon signing a 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, Kenya Children's Home Adoption Society prepared and filed a report dated 11th October, 2019. They had also issued a Certificate of Serial No. [xxxx] dated 20th February, 2019 declaring the child free for adoption. The guardian ad litem RNM filed a report dated 10th December, 2019 which was favourable 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. He prepared and filed a report dated 2nd December, 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. The orders sought by the Applicants herein relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child's best interests are of paramount importance in every matter concerning the child.”

The **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof amplifies this principle.

8. I note that this is a local adoption and the Applicants, in my opinion have fulfilled the requirements for local adoption under the **Children Act, 2001**. They have proved during the placement period prior to adoption that they are emotionally and financially capable of taking on the challenge of raising the child in this matter.

9. Secondly, 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.

10. 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.

11. SMK and FWM, friends to the Applicants, by a joint affidavit sworn on 29th August, 2019 consented to be appointed as legal guardians in the event that the Applicants are incapacitated and cannot care for the child.

12. 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. Not only does the child gain a loving and warm family, he also gains the added advantage of a sibling.

13. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 29th August, 2019 and order as follows:

i. The Applicants, JWK and MGW are hereby allowed to adopt **Baby JJ a.k.a S a.k.a Baby S a.k.a A Unknown Child a.k.a Baby J a.k.a A Baby Boy** who shall henceforth be known as **DNW**.

ii. His date of birth shall be presumed to be 20th March, 2017. 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 Kiambu.

iii. SMK and FWM 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 VIA EMAIL AT NAIROBI THIS 8TH DAY OF APRIL, 2020.

L. A. ACHODE

HIGH COURT JUDGE