



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY AND PROBATE DIVISION

ADOPTION CAUSE NO. 98 OF 2019

IN THE MATTER OF THE CHILDREN ACT

(ACT NO. 8 OF 2001)

AND

IN THE MATTER BABY SM AKA GOG (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

DNM & EWK (APPLICANTS)

JUDGMENT

Background:

1. The applicants **DNM & EWK** are husband and wife. They started cohabiting as such in 2003 after going through Kikuyu customary rites, and on 5th of April 2006, they solemnised the marriage at the Registrar of Marriages. The couple are aged 55 and 52 respectively.
2. In January 2017, the applicants approached the Kenya Children's Home Adoption Society, seeking for placement of a girl child with them and with an aim of eventual adoption as a result they underwent the necessary processes before placement could take place, including counselling. Thereafter the minor herein was placed with them following an approval by the society's committee on the 21st of November 2018 and the actual placement took place on the 21st day of December 2018. Prior to the placement, the child had been declared free for adoption by the society's committee in a sitting of 21st November 2018 and a certificate accordingly issued.
3. Now before court is an application for adoption of the said minor **Baby SM** by way of an Originating Summons dated the 29th of July, 2019, brought pursuant to **Sections 154, 156, 158, 159, 160, 163, 164 & 170** of the Children's Act. The Applicants seek for orders to adopt the minor and upon such adoption the child be known as **GOGN**; they also pray for orders that **SGM & JNG** be appointed as a legal guardians of the child in the event the applicants are incapacitated or are no more and the child still unable to fend for herself, further for the Registrar General do make appropriate entries in the Adoption Register.
4. Pursuant to an application dated 9th July, 2019, on the 5th day of September, 2019, the court appointed **JNM** as a guardian *ad litem*, who by law is required to safeguard the interest of the minor as these proceedings are ongoing, investigate and report the circumstances pertinent to the adoption, intervene on behalf of the child should a need arise, make recommendations towards the adoption and undertake any other task the court may require.
5. The court also directed both the Director of the Children's Services Department in Nairobi and the said guardian *ad litem* to investigate the Applicants' fitness to adopt and file their respective reports

Reports:

6. **Director of Children's Service Report**

The report is dated 14th November, 2019. The report gives a detailed report of the applicants' background. They are both self-employed currently and reside in their own house in [Particulars Withheld] Estate in South C, Nairobi. They have been married for 17 years and do not have any biological children of their own due to the female applicant's medical problem and thus the need for this adoption and in their own words; in order bring life into the home and the desire to help a needy child.

The child was born pre-maturely at the Kiambu district hospital on the 22nd of January, 2018 and thereafter abandoned by her mother, who is said to have disappeared without trace. Two police letters dated 26th April, 2018 and 5th April 2018 from Kiambu Police Station where the matter was reported state as much.

When found the child was placed at Limuru Children's home pending official committal.

The director upon investigations highly recommended the adoption.

Guardian Ad litem's Report:

7. The Guardian *ad litem* filed a report on 14th October, 2019, which gives details similar to the Director of Children's Services report. The guardian observed that the child is happy and well taken care of by the adoptive parents and has bonded very well with the said parents. It is her view; it is for the best interest of the child to be adopted as proposed.

8. The court finds that the applicants have met all the necessary requirements of the law, and coupled with the above information by the Director of Children's Services and the guardian *ad litem*, the court has formed the opinion that the adoption will be in the best interest of the child.

9. Consequently, the court orders as follows:

- i) **DNM & EWK** be and are hereby authorised to adopt **BABY SM AKA GOG**.
- ii) **The** child upon this adoption will be known as **GOGN**.
- iii) The Registrar General do register the adoption and issue a certificate.
- iv) **SGM & JNG** be and are hereby appointed as the Legal Guardians to **GOGN**.
- v) The guardian ad litem **JNM** is hereby discharge from the obligation earlier bestowed upon her by the court.

SIGNED DATED and DELIVERED in open court this 11th day of June, 2020.

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ALI-ARONI

JUDGE