



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 136 OF 2019 (O.S)

IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001

AND

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY F aka JNN

BY

SWN AND JN (APPLICANTS)

JUDGMENT

1. The Applicants SWN and JN have been in a Kikuyu customary marriage since 2001. They have no child of their own. They wish to adopt the child known as Baby F aka JNN, a minor of the male sex, through the Originating Summons dated 14th October, 2019.
2. From the pleadings, the court gathers that both the male and female Applicant are business persons who operate a taxi business known as [particulars withheld] Services. They reside in a three-bedroom rental house in Karen Hardy, Nairobi and both profess the Christian faith.
3. The minor who is the subject of this adoption was found abandoned at Shauri Moyo Estate in Nairobi County. The child was rescued by a Good Samaritan who reported the matter to Shauri Moyo Police Station where it was booked vide OB. No. [xxxx]. The child was referred to the Child Welfare Society of Kenya (CWSK) Mama Ngina Kenyatta Temporary Place of Safety for care and protection until 3rd July, 2014 when he was transferred to Hope House Babies Home, a partner with CWSK. On 17th November, 2014 he was committed to the care and custody of Hope House Babies Home by the Children's Court at Nairobi vide P&C Case No. 307/2014.
4. The Officer Commanding Shauri Moyo Police Station issued a final letter dated 19th November, 2014 in which he stated that that no one had come forward to claim the child and attempts to trace his kin had borne no fruits. He recommended any appropriate action to ensure the best interest of the child. On 23rd March, 2015 the Applicants took the child into foster care with a view of adopting upon signing an Agreement of Foster Parent. Since then the child has been in the continuous care and custody of the Applicants.
5. Prior to the hearing of the adoption application, Child Welfare Society of Kenya prepared and filed a report dated 27th September, 2019. They had also issued a Certificate of Serial No. 0901 dated 15th March, 2015 declaring the child free for adoption. The guardian ad litem WK prepared and filed a report which was favorable and recommended the adoption of the child by the Applicants.
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 filed a report dated 16th June, 2020 recommending the adoption for reasons that the child stands to gain by becoming the daughter of the Applicants as opposed to living all her life in an institution as an abandoned child.
7. She stated that the Applicants have fulfilled all the requirements for a local adoption as provided in the statute and that the minor is thriving well in the family.
8. The orders sought by the Applicants herein relate to a child. In law, in any matter concerning a child, the best interest of the child is 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**.
9. This is a local adoption and the Applicants, in my opinion, have fulfilled the requirements for a local adoption under the **Children Act**. 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.

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. The Applicants' family members are aware of the proposed adoption and support it.

11. SNN, a brother to the female applicant, and his wife ENK have by affidavits sworn jointly on 10th May, 2020 and 14th October, 2019 consented to be appointed as the 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 virtual 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 warm and loving family.

13. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 14th October, 2019 and order as follows:

- i. The Applicants SWN and JN be and are hereby allowed to adopt **Baby F aka JNN** who shall henceforth be known as **JNN**.
- ii. His date of birth shall be presumed to be 23rd September, 2013. 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 Nairobi.
- iii. SNN and ENK are hereby appointed as the 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 authorized to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 15TH DAY OF OCTOBER, 2020.

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L. A. ACHODE

HIGH COURT JUDGE