



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 161 OF 2017
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF EMN (MINOR)

BY

SPM AND PANM (APPLICANTS)

JUDGMENT

1. The Applicants SPM and PAN are in a monogamous marriage which was solemnized on 3rd December, 1983, under the African Christian Marriage and Divorce Act Cap 151 (repealed). They have been blessed with three (3) biological children of their own. They wish to adopt the child known as Baby EMN, a minor of male sex through the Originating Summons dated 16th November, 2017.
2. From the pleadings the court gathers that the male Applicant works as a Senior Lecturer at [particulars withheld] University while the female Applicant works as a Consultants (self-employed). They have a residence at Kileleshwa, [particulars withheld] close, [particulars withheld] apartments BX, off Kangundo road. They are both Kenyan citizens.
3. Records indicate that the mother of the minor in this matter is a relative of the 2nd Applicant. The biological mother and the prospective adoptive mother are sisters. The biological parent of the minor has no stable income and is unable to provide for her four children.
4. Prior to the hearing of the adoption application, Little Angels Network prepared and filed a report in court. They also issued a certificate No. [Particulars withheld] dated 1st September, 2017 declaring the child free for adoption. The guardian ad litem MM filed a report which was favourable and recommended the adoption of the child by the Applicants.
5. 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 21st June, 2018 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the Son of the Applicants who are able to provide for him. The applicants appear to be a warm family.
6. The child was in court during the hearing and appeared to have a bond with the two Applicants. He was jovial and clearly seemed to trust the Applicants. The Applicants' family members are aware of the proposed adoption and support it.
7. The orders sought by the Applicants 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 other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof amplifies this principle.

8. According to the **Guidelines for Alternative Family Care of Children in Kenya page 153**, “kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child.” The Applicants in this case are relatives of the child and both are Kenyans. This is a local adoption and the Applicants, in this case in my opinion have fulfilled the requirements for a local adoption under the Children Act, 2001
9. I have perused the entire record and find 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. From the foregoing, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicants. Reasons

wherefore, I allow the prayers sought in the Originating Summons dated 16th November, 2017 and order as follows:

- i. The Applicants, SPM and PANM are hereby allowed to adopt **Baby EMN** who shall henceforth be known as **ENM**.
- ii. His date of birth shall be 28th June, 2013. He was born in Kenya and the place of birth shall be Nairobi.
- iii. Prof. NOMJ is hereby appointed legal guardian 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 is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 8th day of April, 2019.

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L. A. ACHODE

HIGH COURT JUDGE