



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 89 OF 2018
IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001

AND

IN THE MATTER OF APPLICATION FOR THE ADOPTION OF
BABY N.

BY

MK.....1ST APPLICANT

EKM.....2ND APPLICANT

JUDGMENT

1. The Applicants in this case MK and EKM (hereafter referred to as the 1st and 2nd Applicants) filed this Originating Summons dated 5.7.2018 seeking to be authorized to adopt Baby N (hereafter referred to as the Child) and to name her SCM.
2. The Applicants are Adult Kenyan Citizens aged 38 and 35 having been born on 22.9.1979 and 27.11.1982 respectively.
3. The Applicants got married on 3.4.2005 at [Particulars Withheld] Restaurant in Nairobi and subsequently solemnized their marriage on 29.8.2009 at Umoja II Nairobi.
4. The applicants were blessed with 2 issues namely:
 - a) **SCM born on 27.11.2011**
 - b) **SCM who unfortunately passed away on 3.12.2017.**
5. The first Applicant operates at [Particulars Withheld] Clinic while the 2nd Applicant runs [Particulars Withheld] Enterprises, an events organizing business and their joint income is evidenced by bank statements attached to the Affidavit in Support of the Originating Summons.
6. The Applicants are physically fit as evidenced by Medical Reports and they have never been convicted with any Criminal Offence.
7. The child was found abandoned by a good Samaritan by name AM near [Particulars Withheld] PRIMARY SCHOOL wrapped in a white polythene bag on 24.3.2017.
8. The good Samaritan reported the matter at Makongeni Police Station where the incident was reported in OB No. xxxx.
9. The Police referred the Child to Thika Level 5 Hospital for medical check-up and the child was treated and Medical Check-Up dated 3.4.2017 was issued.
10. The Child is presumed a Kenyan Citizen of Negroid race and the presumed date of birth is 13.3.2017.
11. The Child was placed at Macheo Children's home, a charitable children's institution by the District Children's Officer at Thika Sub-county and she was officially committed to the said home vide Thika Children's Care and Protection Case no. 117 of 2017.

12. The Police investigated this matter and gave a final report dated 21.12.2017 confirming that the parents of the child could not be traced.

13. The Child was declared free for adoption by Kenya Children's Homes Adoption Society Case Committee on 21.2.2018 vide certificate serial No. xxx, under **Section 159(1) (a) (i)** of the **Children Act** which states that:

“Abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and protection of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months.”

14. The Director Children's Services, the Guardian Ad Litem and the Kenya Children's Homes Adoption Society filed reports dated 31.01.2019, 15.11.2018 and 21.2.2018 respectively.

15. I have considered the Reports and I find that they are in favour of the adoption. I have also considered the Originating Summons and the Affidavits filed herein and annexures thereto and my findings are as follows:

(i) I find that the Applicants have met the legal threshold for adoption of the child.

(ii) I direct that the Applicants be and are hereby authorized to adopt the child and name her SCN.

(iii) The date of birth of the child shall be 13.3.2017 and the place of birth Kiambu County.

(iv) The Child shall be presumed to be a Kenyan Citizen thus entitled to the rights and benefits of a Kenyan Citizen.

(v) FK and PKK be and are hereby appointed legal guardians of the child in case the Applicants are unable to discharge their parental obligations before the child attains the age of majority.

(vi) The Registrar General is directed to enter this adoption in the Adopted Children Register and to issue a certificate to that effect.

(vii) THAT the Guardian Ad litem be and is hereby discharged.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 5TH DAY OF JULY, 2019.

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI