



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 91 OF 2019 (O.S)

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

IN THE MATTER OF ADOPTION OF BABY M

BY

KOO AND JPO (APPLICANTS)

JUDGMENT

1. The Applicants KOO and JPO have been married for a period of over seven (7) years having solemnized their marriage on 10th April, 2012 in Middletown, Middlesex County in the United States of America. They have one biological child of their own (OGO) born on 7th August, 2018. They wish to adopt the female child known as Baby M through the Originating Summons dated 14th June, 2019.
2. From the pleadings, the court gathers that the male Applicant is the Chief Executive Officer of [Particulars Withheld] while the female Applicant is a self-employed Consultant. They reside in a gated community at [Particulars Withheld] East Road in Lavington area Nairobi and both profess the Christian faith. The male Applicant is a Kenyan citizen by birth. Whereas the female Applicant is an American citizen, she is a Kenyan resident and is a holder of a Kenyan Alien card number [xxxx]. A copy thereof is on record.
3. The child who is the subject of this adoption was rescued by a Good Samaritan one, VM having been abandoned near a railway line at Kibera, on 3rd August, 2018. The child was delivered into the care of [Particulars Withheld] Health Facility and thereafter taken to Nairobi Women's Hospital, Adams Arcade branch. The Gender Violence and Recovery Unit of the Nairobi Women's Hospital secured placement and admittance of the child at the Nest Children's Home for temporary care and protection. The matter was reported to Kilimani Police Station where it was recorded vide OB number [xxxx].
4. On 15th August, 2018 the child was committed to the care of Nest Children's Home by the Children's Court at Nairobi vide P&C Case No. 461 of 2018. The OCS Kilimani Police Station issued a final letter dated 8th February, 2019 in which he confirmed that no one had come forward to claim the child and attempts to trace her kin had proved futile. On 14th March, 2019 the Applicants took the child into foster care with a view of adopting upon signing an Infant/Child Release 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, Little Angels Network prepared and filed a report dated 28th February, 2019. They had also issued a Certificate of Serial No. [xxxx] dated 28th February, 2019 declaring the child free for adoption. The guardian ad litem SNM filed a report dated 19th August, 2019 which was favorable and recommended the adoption of the child by the Applicants.
6. An officer from the office of the Director of Children's 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 filed a report dated 9th September, 2019 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants as opposed to living all her life in an institution as an abandoned child.
7. The Children's Officer noted that the Applicants have fulfilled all the legal requirements for a local adoption as provided for in the **Children Act**. Further that the child has bonded well with the biological child of the Applicants and this adoption will provide a good opportunity for her to grow and develop in the same environment with her age mate. That it is therefore in the best interest of the child to be adopted by the Applicants.
8. It is important to note that the orders sought by the Applicants herein relate to a child. In any matter concerning a child, the best interests of the child are 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 statutory requirements for a local adoption. After a careful assessment of the reports filed herein 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. 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.

10. The consent of the biological parents of the child was dispensed with since the child was abandoned at infancy and the parents could not be traced to give the consent.

11. WKC, and RWC friends of the Applicants, by a joint Guardian's letter of Consent dated 10th September, 2018 consented to be appointed as the legal guardians in the event that the Applicants are incapacitated and cannot care for the child. One of the legal guardians, RWC has since passed away. WC was however present at the hearing of the adoption application and stated that despite the demise of her husband, she still wishes and is willing to be appointed as the sole legal guardian of the child.

12. The child was in court during the hearing and was jovial and appeared to have bonded well with both Applicants who appeared eager to have the minor as their child. This court has therefore 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 family, she also gains the added advantage of a sibling.

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

i. The Applicants, KOO and JPO are hereby allowed to adopt the female child known as **Baby M** who shall henceforth be known as **MEO**.

ii. Her date of birth shall be 1st August, 2018. She 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. WKC is hereby appointed the 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 17th day of October, 2019.

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L. A. ACHODE

HIGH COURT JUDGE