

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

ADOPTION CASE NO 13 OF 2018

IN THE MATTER OF ADOPTION OF BABY BS

BY

JMG AND GMM.....APPLICANTS

J U D G M E N T

1. **JMG** and **GMM** are seeking to adopt the minor subject named **BS**, now aged 15 years. The Applicants are a married couple aged 70 and 60 years respectively. They are Kenyans and despite being married since 2002 have not been blessed with biological children. The male Applicant is a retired engineering technician but now practicing farming from which he draws a monthly income of about KSh.45000/= pm. His wife GMM, and co-applicant works as a secretary in her church and earns about KShs.20,000/= pm and also owns a piece of land at Thika.

2. Both of them profess the Christian faith and are adherents of the PCEA. They reside in their own home at [particulars withheld] Location, Kiambu County. Although it seems that the female Applicant had never been married prior to meeting the male Applicant in 2001, the male Applicant was once married and got two children who left with his estranged wife while very young, but are now adults. He appears to have lost touch with the said first family.

3. The subject minor was found abandoned in the compound of Kariobangi Catholic Church on 1st November 2006 and a report made to Kariobangi Police Post and booked *vide* **OB No. xx/x/xx/xxxx**. On the same day, she was admitted into Missionaries of Charity children home. Her presumed date of birth is 1st June 2005. Under **Nairobi Protection and Care Case No.36 of 2001** she was committed to the home for a period of 3 years. Her parents are unknown and nobody had come forward to claim her by 2012. On xx/x/xx xxxx adoption agency declared her free for adoption under **certificate No. xxx**.

4. On 12th January 2013 the subject minor was placed in the custody of the Applicants pursuant to an agreement of even date executed between Missionaries of Charity – Huruma and the Applicants. From the reports of the guardian *ad litem* and the County Children Co-ordinator, Kiambu County and the report from N. Primary School where the subject is a student, she is a slow learner and has a speech impairment. Nevertheless, she is well – adjusted, obedient, willing to learn and has settled well in her new home. This court interviewed the subject minor and confirmed that while she is not very articulate in answering simple questions, she was happy with the adoptive parents whom she referred to as “**mum**” and “**dad**”.

5. It appears from the material supplied in support of the Originating Summons, the respective reports included, that the Applicants are mature persons, financially secure and able to provide and care for the subject. They demonstrated willingness to take in the subject minor despite being aware of her cognitive limitations. She has bonded well with them and their extended family which supports the adoption.

6. The guardian *ad litem* and Children Co-Ordinator strongly recommend the adoption, noting that the subject minor is happily settled with her adoptive parents and that the adoptive parents are committed to giving her necessary parental love and care. They assert that the adoption is in the subject minor’s best interest.

7. Despite their advanced age, the adoptive parents seem to have great plans for the subject and have enrolled her in a school where she is making slow but sure progress despite her, cognitive challenges. Their motive for adoption is to have a child of their own. Thus, reviewing all the above, and particularly the fact that the subject minor has been in the care of the adoptive parents for about 6 years now and appears to be happy, and the age of the female Applicant and of the subject minor, this court considers that the advanced age of the male Applicant ought not to defeat the proposed adoption which, on all accounts is in the best interest of the subject minor. In my view, the subject minor would be traumatized by a separation from the family she has come to embrace as her own.

8. The court is of the view that female Applicant in particular satisfies all the requirements of a local adoption while the male Applicant, despite his advanced age is eminently suited to be an adoptive father in terms of other requirements. The complete integration of the subject minor in a family which loves and cares for her serves her best interest. In the circumstances, I do grant prayers 1 to 6 of the Amended Originating Summons filed on 30th May 2019.

DELIVERED AND SIGNED AT KIAMBU THIS 11TH DAY OF OCTOBER 2019.

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C MEOLI

JUDGE

In the presence of:

No appearance for Applicants

Court Assistant - Kevin