



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ADOPTION CAUSE NO. 25 OF 2013
IN THE MATTER OF THE CHILDREN ACT 8 OF 2001
AND
IN THE MATTER OF THE ADOPTION OF BABY F

BY

HM and AM

RULING

1. The adoption order was sought vide two applications. The first application is brought by way of undated chamber Summons. The Applicants **HM and AM** seek the following orders:

1. **THAT** WKK of Post Office Box 128 be appointed Guardian ad Litem of BABY F a child.

2. **THAT** the honorable court to direct the Director of Children's Services to prepare a home study report for submission to this honorable court.

2. The Second application is brought by way of originating Summons under Section 154 of the Children Act No. 8 of 2001. It is dated 12th July, 2013. The Applicants seek the following orders:

1. **THAT** the Applicants be authorized to adopt BABY F a minor and

2. **THAT** the child is to be known as FMM.

3. In the preliminary stage, the first application was allowed by the court.

4. According to the applicant's affidavit filed in court the applicants are customarily married to each other from 1994. They are Kenyan citizens as per the identity cards annexed to the application indicating that the applicants are HMM and AMM.

5. According to the applicant's affidavit dated 12th July, 2013, WKK consented to be guardian ad litem of the minor. The applicants depone that they had never been convicted of a criminal offence and attached police clearance documents. They averred that they received the child into their care and possession on 14th October, 2008.

6. According to a notice of appointment filed by PM Mutuku and Co. Advocates, the said advocates came on record for the applicants on 15th May, 2018. Vide amended Originating summons that were brought under Sections 154, 156, 157, 158, 160, 163, 164 and 170 of the Children Act No.8 of 2001 and Section 24 of the Interpretation and General Provisions Act Cap 2 of the Laws of Kenya, learned counsel for the applicants sought the following additional orders;

3. **THAT** the child be considered a Kenyan Citizen and as a result be entitled to the rights and benefits of a Kenyan Citizen including being issued with a Kenyan Passport whenever desired

4. **THAT** the registrar general makes the appropriate entries in the Adopted children Register

5. THAT BMN be appointed Legal Guardian of the child.

6. THAT the court do issue any further orders as are in the interest of justice.

7. Vide a report filed on 23rd October, 2019 by Child Welfare Society of Kenya, the minor was born to MWM alias MWN on 26th April, 2007 at Pumwani Maternity Hospital under IP 5375 and birth notification 005**** and prior to the child's birth, the biological mother visited Child Welfare society and indicated her willingness to give up the child for adoption because the child was sired with a man who denied paternity and she gave her consent and filled a memorandum. The report stated that the child was discharged from hospital and rescued by CWSK and placed in the Abandoned Baby Care on 15th May, 2007 and that the child was committed to the same home for temporary care and Protection on 10th September, 2007 vide C& P 192 of 2007. The report indicated that the baby was placed in the care of the applicants to foster on 14th October, 2008 and efforts to trace the child's mother were fruitless. The report stated that CWSK reported the matter to Langata Police Station which was booked Vide OB 41/27/06/2019. The report sought that the consent of the biological mother be dispensed with under Section 159(1)(c) of the Children Act. The report declared the child available for adoption. A certificate No. 08** dated 28th August, 2019 was issued that declared the child free for adoption. Vide another report dated 30th August, 2019 CWSK reported that the applicants namely HMM and AMM had taken care of the baby since it was committed to them and observed that the child had bonded well with the applicants hence they are suitable to adopt him.

Jacinta Mwinzi is the Children's Officer, Kitui County. She conducted a social inquiry on the Applicants by visiting the applicants at their home on 20.4.2018. It was observed that the applicants have no child of their own and seek to adopt the minor. The minor seemed to have bonded well with the applicants and she opined that the applicants are well suited for adoption order as sought. The said officer filed a favourable report dated 20.4.2018 as to the suitability of the Applicants to adopt the minor. The officer appeared before me on 4.12.2018 to have the report dated 20.4.2018 in respect of a home visit that was undertaken confirming the suitability of the applicants to adopt the baby in the instant proceedings.

9. On 23.10.2019 Maureen Maresi from CWSK appeared in court to recommend the applicants' application and to confirm the suitability of the applicants to adopt the minor as well as adopt the report dated 30.8.2019. BMN appeared before me on 7.6.2018 to confirm and rely on the contents of his affidavit and willingness to be appointed as legal guardians of the minor and to take up his duties as well as recommend the applicants to adopt the minor. The legal guardian appeared to understand his responsibilities towards the minor and ready to take up parental duties in the event of incapacitation of the applicants and is fully aware that the role is irrevocable. The applicants also appeared before me on the same day and relied on their affidavits to support the application and indicated willingness to adopt and cater for the needs of the minor.

10. This court is satisfied that the Applicants are suitable persons to adopt the minor and that they are financially stable and have the means to provide and care for her. I also find that it is in the best interests of the child to allow the application for adoption.

For the above reasons, the Court orders as follows;

1. THAT the Applicants whose names as per the identity cards are HMM and AMM be and are hereby authorized to adopt BABY F a child and who is to be known as FMM.

2. THAT BMN be and is hereby appointed Legal Guardian of the minor.

3. THAT the Registrar-General do make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.

4. THAT the Guardian Ad Litem is hereby discharged.

Orders accordingly.

Dated and delivered at Machakos this 14th day of November, 2019.

D. K. Kemei

Judge