



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ADOPTION CAUSE NO. 8 OF 2019
IN THE MATTER OF BABY BS
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY
MD AND MKM - APPLICANTS

RULING

1. The Applicants herein **MD** and **MKM** filed Exparte originating summons dated 27/05/2019 seeking the following prayers:

- (a) That the Applicants herein, MD and MKM be authorized to adopt the child currently identified and known as BABY BS.*
- (b) That the child be renamed MMM.*
- (c) That DMM be appointed as a Guardian Ad Litem of the child.*
- (d) That the Director Children Services do investigate and file a report on the suitability of the Applicants to adopt the child.*
- (e) That the child be presumed to be a Kenya Citizen, and a consequence, be entitled to the rights and benefits of a Kenyan citizen, including being issued with a Kenyan Passport whenever desired.*
- (f) That the Registrar General makes the appropriate entries in the Adopted children Register*
- (g) That PMM and FMM be deemed to be the appointed legal guardians in respect of the child.*
- (h) That this court do issue such further orders as are in the interest of justice.*

2. The Application is supported by the affidavit jointly sworn by the Applicants on even date and which stated *inter alia*: that the Applicants are legally married vide certificate of marriage number[*****]; that they are practicing christians and members of St. [*****] Catholic Mission in Mitaboni – Machakos County; that both applicants are engaged in business and farming and have adequate income as evidenced by the Equity Bank Statement thus capable of assuming financial responsibility of the child’s medical care, education and general upkeep; that they are fit both physically and emotionally as evidenced by respective medical reports after thorough examinations and specimen analysis; that they do not have any past criminal record as evidenced by a police clearance certificate dated 8/06/2019; that the child is a male of African/Black race and presumed to be of Kenyan nationality born on 31/08/2015 at Kitengela Sub- County Hospital as evidenced by Certificate of birth serial number [*****] whereat the mother abandoned him while admitted for incubation care due to having been born prematurely; that the matter was reported at Kitengela police station on 18th September 2015 vide OB 3/18/9/15, as evidenced by the letter dated 18th September, 2015 to the Kenya Children’s Homes and later admitted into the St. Thomas Barnados Children’s home and was later formally admitted into the home on 18th September, 2015: that the child was committed to the Home by the Nairobi children’s Court on 6/6/2018 for a period of three (3) years vide Protection and Care Case 48 of 2016 vide committal order given on the same day; that nobody has since then come forth to claim the child as evidenced by the final police letter dated 18th April, 2016 from the OCS Kitengela Traffic Base, IP Stanley Mwangi; that the child was declared free for adoption by the Adoption Society of Kenya vide Certificate Serial Number [****] issued on 15th February, 2017.

3. The proposed Guardian Ad litem DMM appeared in court and confirmed that she had known the applicants who are her neighbours for a period of ten (10) years and that they also do business and that the child was placed with them in the year 2017. She told the court that she knows the duties of a Guardian Ad Litem namely to see to it that the Applicants are accountable towards the welfare of the baby and to report to court appropriately. She duly signed a consent to act as Guardian Ad Litem and undertook to file a report on the suitability of the Applicants to adopt the baby. Simultaneously with the appointment of the Guardian Ad Litem this court directed the Director of Children

Services to investigate the Applicants' fitness to adopt the child and to file a report in that regard.

4. Pauline Kitema from the Kenya Children Adoption Society appeared before me and confirmed that the child was placed with the Applicants on 2/05/2017. She added that the Society recommends the adoption application since in their report dated 22/08/2019 and filed on 09/10/2019 the applicants meet the requisite conditions to adopt the minor.

5. PMM a bursar at [Particulars Withheld] High School and his wife FMM – residents of Mitaboni agreed to come on board as a Legal Guardians of the minor. He averred that he is well conversant with the role of legal guardian and that he and his wife are ready to be a substitute parents to the child. He confirmed that they are aware that the role of legal guardian is irrevocable. FMM who is wife to the first legal guardian confirmed that she and her husband have agreed to be appointed as legal guardians of the minor and that they have duly signed a consent to act as legal guardians of the minor.

6. Josephine Wairimu Hinga is the Kathiani Sub-County Children Officer. She filed her report dated 22/10/2019. She confirmed having visited the Applicants at their Mitaboni home where she noted that they live in a two (2) bedroomed brick house standing on a two acre parcel of land. According to her, the Applicants are able to provide the necessary needs for the child. She recommended the adoption.

7. DMM the Guardian Ad Litem and a business lady at Mitaboni filed a comprehensive report dated 6/09/2019 in which she revealed that the baby has bonded well with the Applicants. She also confirmed that the environment is good for the baby's growth and development.

8. I have considered the Applicants originating summons as well as the attendant documents and the several reports plus the evidence adduced. I find the Applicants suitable to adopt the baby named **BS**. The baby having been freed for adoption and placed with the applicants who have whole heartedly accepted him as their child is likely to have his rights taken care of by the applicants. He has bonded quite well with the adoptive parents. It is in the best interest of the minor to allow the adoption application. Consequently the application is meritorious and is allowed in the following terms:

(a) That the Applicants herein, MD and MKM are hereby authorized to adopt the child currently identified and known as BABY BS.

(b) That the child be renamed MMM.

(c) That PMM and FMM be deemed to be the appointed legal guardians in respect of the child.

(d) That the child be presumed to be a Kenya Citizen, and a consequence, be entitled to the rights and benefits of a Kenyan citizen, including being issued with a Kenyan Passport whenever desired.

(e) That the Registrar General makes the appropriate entries in the Adopted children Register.

(f) That the Guardian Ad Litem is hereby discharged.

It is so ordered.

Dated and delivered at Machakos this 9th day of December, 2019.

D. K. Kemei

Judge