



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 125 OF 2017

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

AND

IN THE ADOPTION OF BABY M (ALSO KNOWN AS BABY E, ALSO KNOWN AS ABANDONED BABY, ALSO KNOWN AS BABY M ALSO KNOWN AS BABY E M AND ALSO KNOWN AS M W (MINOR)

N K N )

J N M ).....APPLICANTS

JUDGMENT

1. By originating summons dated 14<sup>th</sup> August 2017 but filed on 5<sup>th</sup> September 2017, the applicants herein N K N (1<sup>st</sup> applicant) and J N M (2<sup>nd</sup> applicant) sought various orders as particularized hereunder pursuant to Sections 157 and 160 of the Children's Act and all enabling provisions of the Children's Act and legal notice No. 75 of 2002 ;

**a. That the applicants, N K N and J N M be authorized to adopt baby M also known as baby E, also known as abandoned baby, also known as baby M E also known as baby E M also known as M W and henceforth the child be known as E M K.**

**b. That P M M and P M M be appointed legal guardians of the child in the event any misfortune befalls the applicants rendering them immovable or incapable of taking care of the child.**

**c. That the Registrar General be ordered to make appropriate entries in the adopted children's register in respect of E M K.**

**d. That the child was born in Kenya of Kenyan parents and be therefore presumed to be a Kenyan citizen by birth and he is entitled to a Kenyan passport.**

2. Application is premised on grounds on the face of it, statement in support of application for an adoption order dated 14<sup>th</sup> August 2017 and joint affidavit in support deponed by the applicants on the same date

3. The applicants herein who are husband and wife respectively are Kenyan citizens who celebrated Kamba Customary marriage sometime the year 1993. However, due to medical complications of the 2<sup>nd</sup> applicant, the couple has not been blessed with their biological child hence the motivation to adopt the minor herein to fill in the gap and have a sense of completeness in terms of parenthood.

4. The 1<sup>st</sup> applicant who is aged 48 years now is a driver working with [particulars withheld] while the second applicant aged 45 years is a business lady engaged in selling second hand clothes at [particulars withheld].

5. Regarding the baby herein, she was born in sound medical condition on 22<sup>nd</sup> February 2015 at Kiambu District Hospital to one M W of Ngomongo. Immediately upon delivery, the mother sneaked out of the medical facility and disappeared thus abandoning the baby with the hospital staff. A report was made to the Children department and then to Kiambu Police Station vide OB No. 1 [particulars withheld].

6. On 17<sup>th</sup> March 2015, the baby was discharged and released to a social worker (a children officer) who did a discharge certificate releasing the child to Jeany Petty Legacy Children's Home on 24<sup>th</sup> March 2015 for care and protection for a period of 3 years. Subsequently, on 12<sup>th</sup> June 2015, the baby was formally committed to Jeany Petty Children's Legacy Home by Kiambu Children's Court vide Protection and Care

case No. 54/2015. Despite every effort made by the police in tracing the mother and or relatives to the baby as exhibited by their 1<sup>st</sup> letter dated 26<sup>th</sup> March 2015 and final (2<sup>nd</sup>) letter dated 6<sup>th</sup> June 2016, nothing positive came out of the investigations hence the baby remains unclaimed to date.

7. Through the case committee held by Little Angels Adoption Society network on 29<sup>th</sup> July 2016, the baby was declared free for adoption vide certificate S/No. [particulars withheld] after the execution of a placement agreement by the applicants on 21<sup>st</sup> June 2015.

8. Pursuant to a chamber summons dated 14<sup>th</sup> August 2017 and filed on 5<sup>th</sup> September 2017, C K was appointed guardian ad litem on 2<sup>nd</sup> November 2017 and the director children services directed to file an assessment and evaluation report of the applicants and their suitability for adoption within 45 days.

9. Prior to the hearing, the director children services, guardian ad litem and Little Angels Network Adoption Society filed their respective assessment and evaluation reports dated 12<sup>th</sup> February 2018, 17<sup>th</sup> April 2018 and 29<sup>th</sup> July 2016 recommending the adoption.

10. I have considered the application herein, affidavits in support and testimony by both applicants plus materials placed before the court. Issues for determination are:

**a. Is the baby herein available for adoption;**

**b. Have the applicants met the requisite conditions for adoption;**

**c. Is the adoption in the best interest of the baby.**

11. The baby who is the subject of these proceedings was abandoned at Kiambu District Hospital by her mother upon delivery. As evidenced by police letters dated 26<sup>th</sup> March 2015 and 6<sup>th</sup> June 2016, their effort to trace the mother and or relatives has been futile. To that extent the baby has not been claimed by anybody and the requisite consent as required by Section 159 (1) of the Children's Act is dispensed with. Secondly, the baby was declared free for adoption on 29<sup>th</sup> July 2016 by which time the baby was over 6 weeks a mandatory minimum age limit required of a child before adoption in compliance with Section 158 (1) of the Children's Act.

12. According to Section 157 (1) of the Children's Act, any child who is a resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya provided that no application for an adoption order shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants as the case may be evaluated and assessed by a registered adoption society in Kenya.

13. The baby has been under the continuous foster care and control of the applicants for over three months in compliance with Section 157(1). The baby who is below 8 years is presumed to be a Kenyan citizen courtesy of Article 14 of the Kenyan constitution. Having complied with the necessary conditions before adoption, it is my finding that the baby is available for adoption.

14. Are the applicants suitable to adopt the baby? The adoptive parents are Kenyan citizens thus qualifying the adoption herein as a local adoption. They are aged between 25 years and 65 years being the mandatory age requirement for both or either applicant before adopting any baby in compliance with Section 158 (1) of the Children's Act. They are fully aware of the consequences of this adoption and appreciate its consequences. Having been duly assessed and evaluated by both the children department, guardian ad litem and Little Angels Adoption Society, they were found to be medically, emotionally, mentally, morally, socially, physically, psychologically and economically fit and stable. To that extent, the two are suitable persons for purposes of this adoption.

15. Is the adoption in the best interests of the baby? The best interests of a child principle is aptly captured in the Kenyan Constitution Article 53 (2) which provides:

**“A child's best interests are of paramount importance in any matter concerning a child”.**

Besides the constitution, Section 4 (2) and (3) of the Children's Act reinforces the same principle.

Sub Section 2 provides:

**“In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.**

**(See – In Re A.W alias AN (a child) (2008) 1 KLR (G and F).**

16. Having been abandoned and now unclaimed, the baby has no known and dependable person or home. Her generational identity is not traceable and her future is in darkness. The applicants are people of means with the 1<sup>st</sup> applicant working as a driver and the second applicant a business lady with a combined monthly income of 52,000/= per month. They are staying in a decent one bed roomed self contained house in a modesty estate at Imara Daima. With this environment and economic background, the baby is assured of necessary and basic requirements inter-alia shelter, food, clothing, education and medical care through NHIF medical facility.

17. The applicants having appreciated their responsibilities and obligations towards the baby and her rights, the baby is guaranteed of social, economic, moral, psychological and mental growth and support. Besides, she will be entitled to inheritance and above all, a home and generational identity all of which are in the best interest of any baby.

18. I have no doubt, the baby has fully bonded and integrated with the adoptive parents who have expressed their love for the baby and the joy she has brought to the family and the conspicuous excitement exhibited on the 2<sup>nd</sup> applicant's face as she fondly held the baby tightly whenever she was running around the court room.

19. For the above reasons stated, it is my finding that taking into account all circumstances pertaining to this application, it is in the best interests of the baby that she be adopted by the applicants and therefore make orders as follows:

**a. That the applicants herein N K N and J N M be and are hereby authorized to adopt baby M alias baby E, alias abandoned baby, alias M E alias baby E M alias M W henceforth to be known as E M K.**

**b. That the baby's date of birth shall be 22<sup>nd</sup> February 2015 and her place of birth [particulars withheld], Kiambu County, Kenya**

**c. That the Registrar General be and is hereby directed to enter the adoption order in the children's adoption register.**

**d. That the Director Immigration be and is hereby directed to issue the child with a Kenyan passport.**

**e. That the guardian ad litem be and is hereby discharged.**

**f. That P M M and P M M being friends to the applicants be and are hereby appointed as legal guardians in the event the applicants dies or are incapacitated by any eventuality.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 5<sup>TH</sup> DAY OF JULY, 2018.**

**J.N. ONYIEGO (JUDGE)**

In the presence of:

N/A.....Counsel for the applicants

Edwin.....Court Assistant