



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 136 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY S J**

**BY**

**G O A AND C A K .....APPLICANTS**

**JUDGMENT**

1. The applicants have brought an application by way of Originating Summons dated 20<sup>th</sup> September, 2017 and filed on the same date seeking various orders as follows:

**a) That the Applicants be authorized to adopt Baby S J and the child be called E G M henceforth.**

**b) That the Registrar General do make the appropriate entries in the Adopted Children's Register in respect of Baby E G M.**

**c) That A A K of P. O. Box [...] -00100, Nairobi and Identity Card No. 23733614 and N A Isaac of P. O. Box 2908-00100, Nairobi and Identity Card No. [...] be and are hereby appointed as legal guardians of baby E G M in the event of death or incapacity of the applicants.**

**d) That the court does issue such other orders as may be necessary in the best interest of the child.**

2. The application is anchored on a joint statement of the applicants dated 20<sup>th</sup> September, 2017 and its annexures thereof.

3. The Applicants, G O A and C A K, are married under customary law, which marriage has since been solemnized at the Registrar' office in Nairobi on 3<sup>rd</sup> January, 2014. They have been married for 13 years but they have no biological children hence their wish to adopt the child herein. (See a copy of their marriage certificate annexed as exhibit 6).

4. The Applicants are both Kenyan citizens, who profess the Christian faith and with no previous criminal record. That they have sufficient family income and finances to enable them care for the child. The male applicant is an [particulars withheld] at the [particulars withheld] whereas the female applicant is a stay at home mum.

5. The records indicate that the child was abandoned by the biological mother in Kangemi on 21<sup>st</sup> June, 2015 at one S A's home when he was just two weeks old. Faced with the sad situation, S reported the incidence to Kabete police station where the case was reported vide O.B. No.30/21/6/2015. According to S, the mother to the baby had claimed that his son was the biological father to the baby which paternity the said son vehemently denied.

6. On the same day, the child was admitted to the Nest Children's Home as a child in need of care and protection. The Senior Resident Magistrate's court at Nairobi on 7<sup>th</sup> October, 2015 granted orders committing the child to the Nest Children's Home vide Protection and Care case number 226 of 2015 for a period of three (3) years.

7. The child was declared free for adoption vide a certificate of serial no. 001791 issued by the Little Angels Network on 30<sup>th</sup> September, 2014. Subsequently, the baby was placed under the forster care and custody of the applicants on 17<sup>th</sup> December 2016 pursuant to section 157(1) of the children's Act.

8. Prior to the hearing of the adoption application, the *guardian ad litem*, the Office of the Director children's services and the Little Angels Network Adoption Society filed their assessment and evaluation reports on 2<sup>nd</sup> July, 2018, 22<sup>nd</sup> June, 2018, and 15<sup>th</sup> February, 2018 respectively recommending the adoption.

9. The report filed by the guardian ad litem M W Mambo recommended the adoption of the child by the Applicants. In their report, the

Director of Children Services also recommended the adoption of the child by the applicants stating that the applicants have demonstrated that they can provide for the child both financially and emotionally.

10. However the report of the Director Children's services has reservations concerning the consent to offer the child up for adoption which was given by the alleged biological father who failed to acknowledge paternity in his written statement. They state further that should the court be satisfied with the explanation given by the Little Angels Network regarding the same, the same should grant the applicants the adoption as sought.

11. According to the report filed by Little Angels Network on 15<sup>th</sup> February, 2018, the child was abandoned by a lady presumed to be his biological mother two (2) weeks after his birth. Efforts to reach her have been futile and police investigations have unsuccessful in tracing her. The alleged biological father denied paternity and any relationship to the child. Later however, upon confrontation, the alleged biological father confirmed that it was possible that the child is his after which he gave his consent.

12. It is clear from the police investigations as evidenced by their letter dated 3<sup>rd</sup> March 2016 that there is nobody claiming the baby. The son to S one M M who is alleged to be the biological father of the baby denied paternity and that is why the baby was taken to the police station as an abandoned case.

13. **Section 159(1)** of the **Children Act** provides that the court may dispense with consent if the parents or guardians of the child have abandoned, neglected, persistently failed to maintain or persistently ill-treated the child. Under that section, abandonment may be presumed if the child appears to have been abandoned at birth or if the institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six (6) months.

14. It was therefore not necessary to seek consent from a stranger to the baby. The purported consents allegedly secured from M M on the 19<sup>th</sup> June 2017 31<sup>st</sup> July 2017 by Little Angels Adoption society are null and void as they were not freely given based on admission of paternity. It is my finding that since there is no parent or relative claiming the baby, consent is hereby dispensed with in compliance with section 159(1) of the children's Act.

15. This is a local adoption and is important to analyze the suitability of the applicants to adopt the child herein. The male applicant is aged 45 years while the female applicant is aged 35 years having been born in 1973 and 1983 respectively. The applicants have therefore satisfied the age requirements since they are within the age bracket of not less 25yrs and not less than 21 years older than the child and not aged more than 65 years as provided under **section 158(1)** of the **Children Act**.

16. Of significance is that, this is a matter involving a child, and in any matter concerning a child, the best interests of the child are of paramount importance as provided under **Article 53** of the **Constitution** and **section 4(3)** of the **Children Act**. Examination of the reports filed in this matter indicates that the adoption would be in the best interests of the child. The child has also bonded well with the applicants acknowledging them as mum and dad.

17. Accordingly, the application dated 20<sup>th</sup> September, 2017 is allowed with orders that:

**a) G O A and C A K be and are hereby authorized to adopt Baby S J who shall henceforth be known as E G M.**

**b) That the date of birth shall be 8<sup>th</sup>**

**c) A A K and N A Isaac are hereby appointed as the legal guardians of the child in the event that the Applicants die, or are incapacitated by ill-health.**

**d) That the Director Children services is directed to issue the baby with a Kenyan passport.**

**e) That the Registrar General be and is hereby directed to enter this adoption into the Register of Adoptions.**

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

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 1<sup>ST</sup> DAY OF NOVEMBER 2018**

**J.N. ONYIEGO**

**JUDGE**