



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 84 OF 2015 (OS)

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

IN THE MATTER OF ADOPTION OF BABY J ALIAS ABANDONED BABY BOY

BY

SKM AND HWM (APPLICANTS)

JUDGMENT

1. The Applicants SKM and HWM are in a monogamous marriage which was solemnized at the Registrar's office, in Nairobi on 21st August, 2012. They have no child of their own. They wish to adopt the child known as Baby J Alias Abandoned Baby Boy, a minor of male sex, through the Originating Summons dated 1st April, 2015. They indicate that they are both farmers. They reside in Kayole and are both Christians.
2. Records indicate that on 13th May, 2015, the child who is the subject of this adoption proceedings was found abandoned at the Kenyatta National Hospital compound. The report was booked via OB No. [Particulars Withheld] at the Kenyatta Police Post.
3. On 12th June, 2013 the child was referred to Thomas Barnados Home for care and protection. On 13th November, 2013 the child was officially committed to the same home by the Resident Magistrate at Nairobi court, vide P&C Case No. 411/2013. A second letter dated 22nd January, 2014 from Kenyatta Police Post indicates that the biological parents of the child were not traced, nor did anyone come forward to claim the child.
4. The child was declared free for adoption on 12th March, 2014 by the Kenya Children's Home Adoption Society, vide certificate No. [particulars withheld]. He was released into the custody of the Applicants for mandatory foster care pending adoption on 13th May, 2014. The Applicants also signed a Foster Care Agreement dated the same day. Since then he has been in the continuous custody and care of the Applicants. Prior to the hearing of the adoption application, Kenya Children's Home Adoption Society, an adoption society, prepared and filed a report in court.
5. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child.
6. The Director of Children's Services also filed a report dated 10th September, 2015 recommending the adoption for reasons that the child stands to gain the opportunities provided by becoming the son of the

Applicants and growing up in a home rather than growing up in an institution. The guardian ad litem, M/s M N M also filed a report that was favourable and recommended the adoption of the child by the Applicants.

7. The child was in court during the hearing and appeared to have bonded well with the Applicants. He was jovial and related well with the Applicants. Both Applicants' families support the adoption.

8. More importantly, the orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child’s best interests are of paramount importance in every matter concerning the child.”

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof.

9. This is a local adoption where the Applicants in my opinion fulfil the requirements for local adoption under the Children Act, 2001. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. Secondly they meet the social parameters that I consider relevant to their taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred to by the adoption order sought.

10. From the foregoing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Reasons wherefore I allow the prayers sought in the Originating Summons dated 1st April, 2015 and order as follows:

- i. The Applicants, SKM and HWN are hereby allowed to adopt **Baby J Alias Abandoned Baby Boy** who shall henceforth be known as **JMK**.
- ii. His date of birth shall be presumed to be 8th May, 2013. He is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be Nairobi.
- iii. JKM and BM (Brother and sister in law to the female Applicant) respectively are hereby appointed legal guardians of the child in the event that the Applicants die or are incapacitated by ill-health.
- iv. The Registrar General is directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **14th day of July 2016**.

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L. A. ACHODE

JUDGE