



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. E048 OF 2020

IN THE MATTER OF

HG ALIAS HAA

BABY H ALIAS A BABY GIRL

ALIAS UNKNOWN BABY.....CHILD

AND

FKN.....1ST APPLICANT

CNW.....2ND APPLICANT

JUDGMENT

1. Before this Court is the Originating Summons dated **20th August 2020** by which the Applicants seek the following orders –

“1. SPENT

2. SPENT

3. THAT the applicants be authorized to adopt HG alias H alias ABANDONED BABY H alias ABANDONED BABY GIRL alias UNKNOWN BABY to be known as TTN.

4. THAT the child be presumed a Kenyan Citizen by birth.

5. THAT the child’s date of birth be 20th December, 2017 and the place of birth be NAIROBI.

6. THAT the Registrar General be directed to enter the adoption in the Adopted Children Register.

7. THAT the Director Immigration be authorized to issue the child with a Kenyan passport.

8. THAT DC and EC be appointed the legal guardians of the child in event of the death or incapacity of the Applicants before the child is of age or independent.

9. THAT the Court be pleased to make any further orders it deems necessary”.

2. The summons was canvassed by way of *vive voce* evidence on the online Platform.

3. The Applicants **FKN** and **KNW** are a couple who got married to each other in **April 2009**. Their union has been blessed with two children aged **11 years** and **9 years**. The applicants now seek to adopt a girl child. They both confirm to the court that they fully understand the legal implications of an adoption order.

4. The prerequisites for Adoption are set in **Section 156(1)** of the **Children’s Act 2001**, which provides as follow: -

“159(1) No arrangement shall be commenced for the adoption of a child unless the child is at least (6) weeks old and has been declared free for adoption by a Registered Adoption Society in accordance with the Rules prescribed in that behalf.”

5. The subject child was born on **20th December 2017**. Annexed to the statement in support of the summons is a copy of the child’s Birth Notification Serial No. **xxxxxx** issued by the **Mama Lucy Kibaki Hospital** (Annexure ‘**FCN-1**’). Therefore the child in question is now about **3 years old** which is above the **six (6) weeks** age limit provided for in the Act.

6. **CHANGE TRUST LIMITED** which is a registered adoption agency has annexed a copy of their certificate dated **21st July 2018** Serial No. **xxxxx**, declaring the child Free for Adoption. Accordingly, I am satisfied that the legal prerequisites for an adoption order have been met.

7. The duty of the court is to analyze the material placed before it to determine whether the Applicants are suitable adoptive parents. The applicants are both Kenyan citizens as evidenced by the copies of their National Identity Cards (Annexures ‘**FCN-7**’) annexed to the summons.

8. As stated earlier the Applicants are a couple who got married to each other on **4th April 2009** at the **[particulars withheld] Church in Woodley**. A copy of their Marriage Certificate serial No. **xxxxx** is annexed to the summons. (Annexure ‘**FCN-8**’). The couple have two biological children namely –

(i) **TTN** – born on **24th December 2010**. A copy of her Birth Certificate Serial No. **xxxxx** (Annexure ‘**FCN-9**’) is annexed to the Summons.

(ii) **EKK** – born on **20th December 2012**. A copy of his Birth Certificate Serial No **xxxxxx** (Annexure ‘**FCN-9(b)**’) is also annexed to the summons.

9. The Applicants are both committed Christians and are active congregants at the **NPC – Woodley Church** where the 1st Applicant is an Usher and the 2nd Applicant is involved in the Music Ministry. The couple intend to raise the child in the Christian Faith.

10. Both Applicants have stable and well paying jobs. The 1st Applicant is the **[particulars withheld]** in charge of Water Sanitation Environment Energy and National Resources at the **[particulars withheld] County Government** whilst the 2nd Applicant is a **[particulars withheld]** with the **[particulars withheld] County Government**. The Applicants have both annexed copies of their respective payslips (Annexure ‘**FCN-10**’) indicating that they are financially stable with income sufficient to enable them provide for the needs of **three (3)** children.

11. The Applicants were both examined by a Doctor and each was found to be in good physical and mental health. Copies of their medical reports are (Annexures ‘**FCN-11**’) to the summons. They have each exhibited certificates of Good conduct (Annexures ‘**FCN-12**’) issued by the **Kenya Police Service** proving that neither has a criminal record.

12. Finally, the Applicants have appointed as legal Guardian for the child a couple who were their best couple during their wedding. The legal Guardians **DC** and **EC** have signed a letter of consent dated **6th July 2017** (Annexure ‘**FCN-14**’) indicating their willingness to step in and care for the child in the event the Applicants are unable or unavailable to do so.

13. The Applicants told the court that their families are aware of and fully support their intention to adopt the child. That their two other children are excited to welcome the child as their baby sister. The 2nd Applicant explained to the court that having volunteered in Children’s Homes during their student days, the Applicants both formed a desire and intention to provide a needy child with a home, hence their desire to adopt the child.

14. Based on the material presented to this court, I am satisfied that the Applicants are suitable adoptive parents.

15. The subject child was born on **20th December 2017** at the **Mama Lucy Kibaki Hospital** in Nairobi. Having been in born in **Kenya** I hereby declare that the child is a Kenyan citizen by birth.

16. The child was abandoned at birth. Her biological mother escaped from the hospital leaving the child behind. A report was made at **Kayole Police Station vide OB No. 36** of **21st December 2017**. The OB extract appears as (Annexure ‘**FCN-2**’) to the summons.

17. Following her abandonment at the hospital the **Nairobi Children Court** committed the child to the House of **Charity Children’s Home**. Thereafter the child was on **28th July 2018** placed into the custody of the Applicants under a Fostering Agreement (Annexure ‘**FCN-6**’). She has lived with the Applicants in their home to date.

18. **Section 158 (4)** of the **Children Act** provides for the consents which must be sought and obtained before an application for Adoption may be allowed. The Subject child was abandoned at birth. Efforts to trace her biological mother and/or relatives have borne no fruits. (Annexure ‘**FCN-5**’) is a copy of the final Police letter dated **21st June 2019** from **Kayole Police Station**. There is also a letter dated **21st June 2018** authored by the Medical Superintendent at **Mama Lucy Kibaki Hospital** confirming that the child was abandoned at the Maternity Ward of the Hospital on **20th December 2017**. The letter states that efforts to trace the child’s biological mother have been unsuccessful. That to date no person has come forward to claim the child.

19. Given this fact of abandonment there exist no known person from whom consent for the adoption can be sought and/or obtained. Accordingly, I waive the requirement for consent in line with **section 159(i)(a)** of the **Children Act**.

20. In deciding upon any matter involving a child courts are obliged to give priority to the best interests of the said child. **Section 4(2)** of the **Children Act 2001** provides:-

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

21. This is a child who was abandoned at birth. She faced an uncertain future living in Children’s Homes and Institutions. This adoption allows the child the opportunity to be raised in a loving and stable home Environment.

22. A home visit was conducted by the **Directorate of Children’s Services**. The applicants live in a spacious three bed-roomed house in the **Kilimani** area of **Nairobi**. The house is well secured and has sufficient playing area as well as a swimming pool. The house is located in close proximity to schools, hospitals and shopping malls. The applicants have employed a nanny to assist in caring for the child.

23. I was able to see and talk to the child online. She was a healthy, cheerful and happy child. She was able to answer basic questions about herself. The child confirmed that she attends Nursery School. I noted that the child was very comfortable in the presence of the Applicants and their children. I have no doubts that the child has been fully accepted as a cherished member of the family.

24. I have perused the Reports prepared by the **Adoption Agency**, the **Guardian Ad Litem** as well as the Reports prepared by the **Directorate of Children’s Services**. All the Reports were positive and all recommended the adoption.

25. Finally, I find that this adoption serves the best interests of the child. Accordingly I allow the originating summons and make the following orders: -

1. The Applicants are authorized to adopt the child known as **H G alias H alias A BABY H alias ABANDONED BABY GIRL alias UNKNOWN BABY**.
2. Upon adoption, the child will be known as **TTN**.
3. The child is declared to be a Kenyan Citizen by birth and is entitled to all rights and benefits under the **Constitution of Kenya** and all applicable laws.
4. The Registrar General is directed to make the relevant entry in the Adopted Childrens Register.
5. **DC** and **EC** be and are hereby appointed as legal Guardians of the child in the event of the death or incapacity of the Applicants.
6. No orders on costs.

DATED IN NAIROBI THIS 29TH DAY OF OCTOBER 2021.

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MAUREEN A. ODERO

JUDGE