



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 175 OF 2019

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

AND

IN THE MATTER OF ADOPTION OF BABY EM alias UNKNOWN ABANDONED FEMALE BABY (THE CHILD)

AND

IN THE MATTER OF AN APPLICATION OF ADOPTION BY NMM & RBK

JUDGMENT

(1) Before this Court is the Originating Summons dated **16th December 2019** seeking the following orders:-

(i) **THAT** the consent of the biological parents of BABY EJ ALIAS BABY EM ALIAS UNKNOWN ABANDONED FEMALE BABY (THE CHILD) be dispensed with since the child was abandoned shortly after birth.

(ii) **THAT** the Applicants be authorized to adopt BABY EJ ALIAS BABY EM ALIAS UNKNOWN ABANDONED FEMALE BABY (THE CHILD) to be known as ZB.

(iii) **THAT** PMW and RMM both of P.O. Box [...]-00200 Nairobi in the Republic of Kenya be appointed as Legal Guardians of BABY EJ ALIAS BABY EM ALIAS UNKNOWN ABANDONED FEMALE BABY (THE CHILD) upon granting the adoption Order.

(iv) **THAT** the Registrar General be ordered to make the appropriate entries in the Adopted Children's Register in respect of BABY E ALIAS BABY EM ALIAS UNKNOWN ABANDONED FEMALE BABY (THE CHILD).

(v) **THAT** ZB be considered a Kenyan Citizen.

(vi) **THAT** the Court be pleased to make any further orders it deems necessary."

(2) The Summons was canvassed by way of viva voce evidence on the online platform. The Applicant **NMM** and **RBK** are a couple who have been in a marital union since **June 2014**. The couple have no biological children of their own hence the desire to adopt.

(3) The couple informed the Court that they have lived with the subject child in their home since **2019**. They state that their extended family are aware of and support their intention to adopt a child. Each Applicant confirms that they understand and accept the legal obligations of an adoption order. That they will accord to the subject child all rights due to a biological child including the right to inherit.

(4) **PW3 MAM** who was appointed as **Guardian ad Litem** in this matter filed in Court her Report recommending the adoption.

(5) **PW4 MS GRACE EKAMBI** and Officer from the **Little Angels Network** confirms that the Adoption Agency also filed its report recommending the adoption.

(6) **PW5 MR. EZEKIEL KIMANI** a Principal Children Officer filed in Court the Report dated **7th July 2020** prepared by the **Director of Children's Services** which also recommend the adoption.

ANALYSIS AND DETERMINATION

(7) I have considered the evidence adduced in open Court as well as the various Affidavits and reports filed in this matter. The Preliminary requirements for the making of an Adoption Order are set out in **Section 156(1)** of the **Children's Act** which provides as follows:-

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

(8) The subject child was abandoned on **5th August 2018** shortly after birth at the **Machakos Level 5 Hospital**. The child is therefore now about **2½ years old** which is above the **six (6) week** age limit provided by the law. Annexed to the Originating Summons is a copy of a Certificate Serial No. [...] dated **8th May 2019** declaring the child Free for Adoption. I am satisfied that all the legal prerequisites for an Adoption order have been met.

(9) The duty of this Court is to determine whether the Applicants are suitable adoptive parents. As stated earlier the Applicants are a married couple who are both Kenyan citizens as evidenced by the copies of their National Identity Cards which have been annexed to the Summons (Annexure **NMM'8'**). The Applicants got married on **4th June 2014** at the **[Particulars Withheld] Chapel** as proved by the annexed copy of their Marriage Certificate Serial No. [...] (Annexure **NMM'9'**). Despite having been married for the past **eight (8) years** the couple have not been blessed with a child. Hence their desire to adopt a child in order to complete their family.

(10) The Applicants are both in stable employment. The 1st Applicant works with **[Particulars Withheld]** as a Medical Researcher on Permanent and Pensionable terms. This is confirmed by the letter dated **28th November 2019** written by the Director – General of **[Particulars Withheld]** (Annexure **NMM'10'**). The 2nd Applicant works for **[Particulars Withheld]** as a Team Leader. This too is confirmed by the letter dated **27th November 2019** written by the Acting HR Manager of **[Particulars Withheld]**. Each Applicant has annexed a copy of their payslip. Together the Applicants have a joint income of approximately **Kshs. 400,000/-** per month. The Applicants have also annexed copies of their Bank Statements.

(11) Aside from their earnings from employment the Applicants also earn rental income from an Apartment in **Athi River**. From the above it is clear that the Applicants are financially secure. Their joint earnings are more than sufficient to provide for the needs of a growing child.

(12) The Applicants reside in a three bed-roomed Apartment at the **[Particulars Withheld] Estate** along **Mbagathi Way**. The Children's Officer who visited the home reported that the house was spacious and well-furnished. The child has her own bedroom which is well ventilated with enough toys for the child to play with. The Applicants have hired a Nanny to assist in caring for the child. The estate is secure and has several social amenities like shops, markets, schools and hospitals close by. The Applicants home environment is conducive to raising young child. The Applicants are both in good health both physically and mentally based on their medical reports which have been annexed to the Summons (Annexure **NMM '13'**). They both profess the Christian faith and regularly attend mass at **[Particulars Withheld] Catholic Church**.

(13) The Applicants have already introduced the subject child to their respective families and the child has been embraced wholeheartedly as a grandchild. The Applicants have each annexed a copy of their Clearance Certificates issued by the **Kenya Police Service** indicating that neither has a Criminal record (Annexure **NMM'18'**).

(14) Finally the Applicants have appointed as Legal Guardians for the child their family friends **PMW** and **RMM** who are a married couple who have also adopted children. The two Legal Guardians have both signed a letter of consent (Annexure **NMM'11'**) to take up the care of the child in the event the Applicants are unavailable or unable to care for the child. All in all I am satisfied that the Applicants are genuine in their desire to adopt and are suitable as adoptive parents.

(15) The subject-child is a girl child who was born on **5th August 2018** at the **Machakos Level 5 Hospital**. The woman who bore the child and who gave her name as **EM** abandoned the child in the New Born Unit shortly after delivering the child. The matter was reported at **Machakos Police Station** vide **OB Number [...]** of **October 2018**. The **Machakos Children's Court** committed the child to **Mahali Pa Maisha Children's Home** as a child in need of care and protection.

(16) Following the abandonment of the child the Police made efforts to trace the biological mother / relatives. The mother was not traced on the telephone contact she had given the hospital. That number being **0710xxxxxx** turned out to be a telephone contact of a woman who had no relationship with the child or with **'EM'** the child's mother. Efforts were also made to trace the mother through the Assistant Chief of **Nduu Sub-Location Mutituni Location** based on the details given to the Hospital by the child's mother. Annexure **NMM'4'** is a letter dated **15th May 2019** written by the Assistant Chief stating that the lady **EM** was **not** a resident of **Nduu Sub-Location** and was not known in the area. It is apparent that the lady who delivered the subject child gave a false name, phone number and details to the hospital staff – clearly this was done in pursuance of her intention to abandon the child at the hospital.

(17) The efforts to trace the child's mother have to date borne no fruit. No person has come forward to claim the subject child since the day she was abandoned in the hospital. The Final Police letter dated **12th February 2019** from Machakos Police Station confirms that the mother / relatives of the child could not be traced.

(18) **Article 14** of the **Constitution of Kenya, 2010** deals with the question of **Citizenship**. **Article 14(4)** provides as follows:-

“(4) A child found in Kenya who is, or appears to be, less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”

(19) The subject-child was abandoned shortly after birth in **Machakos County** in the Republic of Kenya. This child was actually born in a hospital in Kenya. Therefore in line with **Article 4(1)** I hereby declare her to be a Kenyan citizen by birth. Similarly given that there exists

no person from whom consent for this adoption can be sought and/or obtained I waive the requirement for consent in line with **Section 159(1)** 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** 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 interests of the child shall be a primary consideration.” [own emphasis]

(21) The subject child herein has been in the care and custody of the Applicants for the past **1^{1/2} years** by virtue of a Foster Care Agreement dated **30th June 2019**. No doubt she has bonded with the Applicants. I was able to see and talk to the child on the online platform. She was a cheerful boisterous child. She was able to identify herself by her name ‘**Z**’ and she referred to the 2nd Applicant as her ‘**M**.’ I am certain the child is well loved and cared for.

(22) Given her abandonment at birth this child faced an uncertain future in Children’s Homes or institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment. This is certainly in the best interests of the child. I have perused the Reports filed by the **Guardian ad Litem**, the **Adoption Agency** as well as the **Director of Children’s Services**. All are positive and recommend the adoption without any reservations. I am in agreement and accordingly, I allow this application and make orders as follows:-

- (i) The Applicants **NMM** and **RBK** are authorized to adopt **BABY EJ** alias **BABY EM**.
- (ii) Upon adoption the child to be known as **ZB**.
- (iii) **PMW** and **RMM** are hereby appointed as Legal Guardians for the child.
- (iv) The child is declared to be a Kenyan citizen by birth.
- (v) The Registrar General is directed to make the relevant entry in the Adopted Children’s Register.
- (vi) No orders on costs.

Dated in **Nairobi** this **26th** day of **February, 2021**.

.....

MAUREEN A. ODERO

JUDGE