



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

ADOPTION CAUSE NO. E 099 OF 2021

IN THE MATTER OF THE CHILDREN'S ACT

IN THE MATTER OF ABANDONED CHILD ALIAS ABANDONED BABY BOY ALIAS BABY P ALIAS ABANDONED BABY BOY P I ALIAS P I

(THE CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY CKK AND PNM

JUDGMENT

1. The Applicants CKK and PNM are in a monogamous marriage which was solemnized at the Registrar's office in Nairobi on 4th May 2018. The couple has one biological child named MM born 6th March 1999. They wish to adopt a male child known as baby boy alias baby P alias baby boy P I alias P I through Originating summons dated 29th June 2021.
2. From the pleadings, it is stated that both Applicants are in the water business and also engage in farming. They reside in Tassia estate and both profess the Christian faith.
3. The records before the court indicate that the child in this matter was born on 28th September 2013 as evinced by a Birth Certificate Entry No. xxxxxxxxxx. The baby was found abandoned at Muslim village where she was rescued by one MW of Gladysways. The baby was placed at Upendo children care for temporary care under M/s Evaline I. The matter was later reported to Muthangari Police Station and the matter booked as OB No. xx/xx/x/2014. On 27th March 2014, P was moved to House of Charity Children Home.
4. On 20th March 2017, Muthangari police station issued a final letter in which they confirmed that the biological parent of the child could not be traced neither had anyone come forward to claim the child.
5. On 29th October 2014, the sub-county children officer – Westlands referred the child to Familia ya Ufajiri Children Home since he was past the age limit for children placed at House of Charity Children Home.
6. Prior to the hearing of the adoption application, Kenya Children's Homes prepared and filed a report dated 15th November 2015 declaring the child free for adoption. The guardian ad litem MK. Konji filed a report dated 15th November 2021, which was favorable and recommended the adoption of the minor by the Applicants.
7. An officer from the office of the Director of children's Services conducted home visits and established that the Applicants are financially and emotionally capable of providing for the upkeep and education of the minor. A report dated 28th October 2021 was filed recommending the adoption for reasons that the child stands to benefit from the opportunities provided by becoming a child of the Applicant. That he will gain a family and grow up in a stable home. The applicants were found to have fulfilled the statutory requirements for adoption.
8. This is a local adoption and from the record the Applicants have fulfilled all the legal requirements relating to the adoption of the minor. CKK was born in 1973 and is therefore 49 years old while PNM born in 1977 and is aged 45 years. They are therefore within the age bracket eligible to adopt, being adults having attained the age of twenty-five years and are at least 21 years older than the child but have not attained the age of sixty-five years as provided by Section 158(1) of the Children's Act No. 8 of 2011. The Applicants also meet the social parameters that are considered relevant to them taking on parental responsibility and custody of the minor in this matter on a permanent basis as would be conferred by the adoption order sought.

9. The consent of the biological parents was dispensed with since the child was abandoned at infancy and the parents were not traced to give their consent.

10. PMK, a sister to the male applicant, by a sworn affidavit dated 29th June 2021, consented to be appointed legal guardian in the event that the applicants are incapacitated and cannot care for the child.

11. Article 53(2) of the Constitution, provides the overarching principle which must apply whenever any decision concerning a child is to be considered. It provides that:

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

This constitutional and internationally applicable principle is embedded and amplified in section 4(3) of the Children’s Act No.8 of 2001. Consequently, in view of the submitted reports and the circumstances of this case my considered opinion is that it is in the best interest of the child to be adopted by the Applicant. Reasons wherefore, I allow the prayers sought in the originating summons dated 29th June 2021 and order as follows: -

- i. The Applicants CKK and PNM be and are hereby allowed to adopt Baby P I who shall henceforth be known as DMK.
- ii. His date of birth is 28th September 2013 and he is presumed to have been born in Kenya in accordance with Article 14(4) of the Constitution of Kenya. His place of birth is Nairobi.
- iii. PMK is hereby appointed as legal guardian 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 Adopted Children’s Register.
- v. The guardian ad litem be and is hereby discharged.

It is so ordered.

SIGNED DATED AND DELIVERED IN COURT THIS 27TH DAY OF JANUARY, 2022

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L.A ACHODE