



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. E035 OF 2021

IN THE MATTER OF THE CHILDREN'S ACT 2001

IN THE MATTER ADOPTION OF BABY JA

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY SYN AND MO

JUDGMENT

1. Before this Court is the Originating Summons dated **4th March 2021** by which the **two (2)** Applicants herein seek the following orders:-

“1. THAT SN AND MO of Kenya National Identity Card Numbers xxxxxxxx and xxxxxxxx respectively who are Kenyan Citizens, be authorized to adopt the child: BABY JA born on the 12th day of June 2017.

2. THAT upon adoption, the child be known as JHO.

3. THAT JMO and CNG of Kenya National Identity Card Numbers xxxxxxxx and xxxxxxxx xxxxxxxx respectively be appointed as legal guardians of BABY JA.

4. THAT the Registrar General be directed to enter this adoption into the Register of Adoptions and a subsequent Birth Certificate do issue by the Registrar of Births and Deaths.”

2. The Application is supported by the statement of the two applicants and was canvassed by way of oral evidence vide the online platform.

3. The Applicants are a couple who got married to each other on **7th December 2013**. Their union has not been blessed with any child. The Applicants now seek to adopt the Subject child in order to complete their family. They both confirm that they understand the legal implications of an adoption order and undertake to accord to the child all the rights and privileges due to a biological child.

ANALYSIS AND DETERMINATION

4. I have considered the summons before me the evidence on record as well as the various reports filed in court. The prerequisites for Adoption are set out in **Section 156(1)** of the **Children's Act 2001** 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.”

5. The Subject child was born on **12th June 2017**. He is now **4 ½ years** old which is above the **six (6)** week age limit provided for by law. The **Kenya Childrens Home Adoption Society** which is a registered **Adoption Agency** have annexed to their report a certificate Serial No. **xxxx**, dated **16th May 2018** declaring the child Free for Adoption. I am therefore satisfied that the legal prerequisites for an adoption order have been met.

6. The duty of this court is to analyze the material before it to determine whether the Applicants are suitable adoptive parents. The Applicants are both citizens of Kenya as evidenced by the copies of their National Identify Cards annexed to the summons (Annexure **‘SMO-1’**).

7. The Applicants are a married couple who solemnized their union on **7th December 2013** at the **PCK Plainsview Church** in **Nairobi**. A copy of their marriage Certificate Serial Number **xxxxxx** is Annextrue **‘SMO-2’**. Their union to date has not been blessed with any children hence the desire by the applicants to adopt a child in order to complete their family.

8. The Applicants are both committed Christians and intend to raise the child in the Christian Faith. They worship at the **Plainview Church** where the 1st Applicant serves as a **Catechist**. The Applicants have also annexed their medical reports (Annexure **‘SMO-4’**) indicating that both are in good health.

9. The Applicants are both gainfully employed. The 1st Applicant who is an IT specialist runs a business whilst the 2nd Applicant is employed as a secretary at the **Aga Khan Hospital**. The applicants have annexed to the summons copies of their bank statements (Annexure **‘SMO-3’**) as proof of their financial capability. They earn a joint income of approximately **Kshs 60,000** which is sufficient to enable them provide for the needs of the child.

10. The Applicants have annexed copies of their clearance certificates issued by the **Kenya Police Service** as proof of the fact that neither has a criminal record (Annexure **‘SMO-4’**).

11. They have appointed as legal Guardians the 2nd Applicants brother and sister-in-law. The said legal Guardians **JMO** and **CNG** have both signed a consent dated **4th March 2021** indicating their willingness to step in and care for the child in the event the Applicants are unable or unavailable to provide for the child.

12. Finally, the Applicants told the court that their larger family are supportive of their intention to adopt. From the material availed to this court I am satisfied that the applicants are suitable adoptive parents.

13. The Subject child was born on **12th June 2017**. The child was found abandoned **two (2)** days after his birth along the **Nairobi-Naivasha Highway** at **Kamarithu village** in **Limuru**. The baby was rescued and the matter was reported at **Tigoni Police Station** vide OB Number **18 of 14th June 2017**. A copy of the initial letter is annexed to the summons as (Annexure **‘SMO-6’**).

14. The **Limuru Children Court** thereafter on **21st June 2017** committed the child to **Limuru Childrens Centre** for care and Protection. On **6th August 2018** the child was placed into the custody of the Applicants under a **Foster Care Agreement**.

15. **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.”

16. The Subject child was found abandoned within the Republic of Kenya aged only **two (2)** days old. I therefore declare the child to be a citizen of Kenya by birth.

17. The Subject child was abandoned by his biological mother. Efforts by police to trace the childs parents/relatives have borne no fruit. The final police letter dated **7th March 2018** from **Tigoni Police Station** (Annexure **‘SMO-8’**) indicates that no person came forward to claim the child. In the circumstances, there exists no known person from whom consent for this adoption can be sought

and/or obtained. In the premises, I waive the requirement for consent in line with **Section 159(a)** of the **Children Act, 2001**.

18. In deciding upon any matter involving a child, Courts are obliged to give priority to the best interest 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)

19. This is a child who was abandoned **two (2)** days after he was born. The child faced an uncertain future living in childrens Homes and other similar institutions. This adoption allows the child the opportunity to be raised in a stable and loving home environment.

20. A home visit was conducted by the Chidrens officer. The Applicants were reported to be living on their own property in the **Joska** area of **Machakos County**. They reside in a two bed-roomed house which has adequate space and facilities to raise the child.

21. I have considered the Reports filed by the **Adoption Agency**, the **Guardian Ad litem** and the **Director Childrens Services**. All were positive and all recommended the adoption. I was able to see the child online. He was a healthy cheerful child who was able to answer basic questions about himself. The child who was dressed in his school uniform was comfortable sitting on the lap of the 2nd Applicant.

22. All in all I find that this adoption does serve the best interests of the child.

23. Accordingly, I do allow this summons and make the following orders:-

(1) The Applicants SYN and MO are authorized to adopt the child known as BABY JA.

(2) Upon adoption the child shall be known as JHO.

(3) The child is declared to be a Kenyan Citizen by birth and is entitled to all the 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) JMO and CNG are appointed as the legal Guardians for the child.

Dated in **Nairobi** this 3RD day of **December 2021**.

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MAUREEN A. ODERO

JUDGE



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