



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. E070 OF 2021 (OS)

AND

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

AND

IN THE MATTER OF TT

AND

AN APPLICATION FOR ORDERS OF ADOPTION OF TT

BY

VPC and his wife SAO

JUDGEMENT

1. VPC and SAO the Applicants herein are a married couple. Their marriage was solemnized at the Registrar's office in Nairobi on 29.10.10. The female Applicant went into the marriage with 1 biological child of her own TT, born on 10.8.07. The biological father of the child is unknown and has never been part of his life. The child was under the sole care of the female Applicant until her marriage to the male Applicant in 2010. Since then both Applicants have been caring for the child. They have since been blessed with a child of their own AC, born on 27.12.09. The Applicants now seek to adopt the child and have filed an Originating Summons dated 25.6.21.
2. The Applicants were taken through the adoption process and implications, by Change Trust, a registered adoption society. Following their assessment, the society's case committee sitting on 21.5.21 found the Applicants to have met the requirements for adopting a child and granted their approval. The society also declared the child free for adoption on the same day *vide* its certificate no. xxxx.
3. On 23.9.21, this Court did appoint LJK as the Guardian *ad litem* for the child pending the hearing and determination of the adoption application, in accordance with Section 160 of the Children Act. The guardian ad litem filed her report dated 28.10.21. For the Director of Children Services, a report dated 18.10.21 by Caroline Olilo, Senior Children Officer and countersigned by Hoyd Isadia, Deputy Director, Nairobi Court was filed. Change Trust Kenya also filed its report dated 24.5.21. All these reports are favourable and recommend the proposed adoption.
4. The child is 15 years old. There is on record the written consent of the child in line with Section 158(4)(f) of the Act which provides:
 - (4) ***Subject to section 159 an adoption application shall be accompanied by the following written consents to the making of an adoption order in respect of any child—***
 - (f) ***in the case of a child who has attained the age of 14 years, with the consent of the child.***
5. It is noted that the female Applicant is Kenyan, while the male Applicant is a French national. The question that would then arise is whether this is an international adoption. Section 162 defines international adoptions as:

An adoption order may be made in respect of a child upon the joint application of two spouses who are not Kenya citizens and not resident in Kenya (in this Act referred to as an "international adoption")

6. An international adoption is one where both spouses are not Kenya citizens and not resident in Kenya. In the instant case, although the male Applicant is a French national, the female Applicant is a Kenyan citizen. Applying the definition in Section 162 to the present circumstances therefore, it is clear that this cannot be and is not an international adoption.

7. The Court notes that this is a kinship adoption as the female Applicant is a biological mother of the child. Section 158(1)(c) of the Act provides:

(1) An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants—

(c) is the mother or father of the child.

8. After a careful assessment of the reports filed herein and noting that the child has been in the custody and care of both Applicants for about 13 of his 15 years, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants.

9. The Applicants have been made aware of the consequences of an adoption order. They shall assume all parental rights and duties of biological parents in respect of the child. They shall both treat the adopted child as if he were born to them. They also understand that the adoption order is final and binding during the lifetime of the child and that the child shall have the right to inherit their property alongside their biological child.

10. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interests of the child that he be adopted by the Applicants. The Court makes the following Orders as prayed in the amended Originating Summons herein:

a) The Applicants VPC holder of French passport number XXXX and his wife SAO holder of national identity card number XXXXX are hereby allowed to adopt the child TT who shall henceforth be known as TTC.

b) I direct the Registrar General to enter this order in the Adoption Register.

c) The appointment of LJK, the guardian *ad litem* now stands expired.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF FEBRUARY, 2022

M. THANDE

JUDGE

In the presence of: -

.....**for the Applicant**

.....**Court Assistant**