



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

ADOPTION CAUSE NUMBER 12 OF 2019

IN THE MATTER OF ADOPTION OF BABY AA A.K.A. ANM INFANT

AND

FMN.....1ST APPLICANT

FWM.....2ND APPLICANT

RULING

1. By an undated letter to Kenya Children's Homes, the applicants Francis and Faith sought to adopt a child.

2. Their application appears to have been discussed by a committee, one on 17th May 2017, whose comments were;

"The application presented to members' approval granted for placement with a child that suits their description subject to submission of an affidavit."

3. This is signed by one case committee member and the chairman, only.

4. By a letter dated 2nd December 2016 a letter was written from Kericho Police Station to the Medical Superintendent Kericho District Hospital making reference to; "Abandoned Baby Girl OB 31/26/11/2016". The writer was telling the Medical Superintendent that the "one day old girl was found at Emmanuel Area by a good Samaritan Isaiah Kitur phone... who rescued her. We request for safe custody of the infant in your facility as we prepare for facilitation to court for further legal action."

5. The Children Officer Kericho Sub County by a letter dated 5th December 2016 reference CS/[particulars withheld] asked the Manager Africa Gospel Church (AGC) Baby Centre to receive the child now named AB pursuant to a Committal Order from the **Children's Court at Kericho**. He annexed "Court Committal Order, CNCP form, form C, letter from Kericho District Hospital and Police letter".

6. There was the form C5 bearing the court order but no Protection and Care (P & C) File Number. The letter from the hospital and CNCP form were not filed. Medical report reference number [particulars withheld], was not dated. These gaps need to be filled with proper documents, including the Children Officer's Report used to commit the child to the Charitable Children Institution (CCI).

7. By another letter dated 12th July 2017, reference number [particulars withheld] a letter issued from Kericho Police Station now on letter head, to the Manager Africa Gospel Church (AGC) Baby Centre. It is referenced;

"Abandoned Children"

*Refer my OB 47/15/8/16 dated 15th August 2016, OB 29/31/10/2016 dated 31st October 2016, OB [particulars withheld] dated 6th October 2016 and OB [particulars withheld] dated 19th October 2016, OB [particulars withheld] dated 26th November 2016, **three baby girls and two boys were abandoned respectively**. We took the said children at Kericho District Hospital where they are being taken care of since last year no one has claimed the said children. We are requesting for any assistance from your centre..."*

This letter was treated as the letter from the police confirming that no one had claimed the child who is the subject of this adoption proceedings, and now, the child could be declared free for adoption. The adoption agency did exactly that, and by a document signed by only one case committee member dated 20th September 2017, the child was declared free for adoption and a certificate issued to that effect signed by the Chief Administrator and Case Committee Chairperson.

At this point I find it appropriate to call out the Police and Kenya Christian Homes Adoption Agency's cavalier handling of the application for adoption by the applicants. Adoption is a very serious process. The child is bequeathed with a completely new family, new life, new identity and prospects of a brighter future. The declaration that the child is free for adoption is like a new birth. When it is taken so casually it is disheartening.

The document from the Kericho Police Station demonstrates an unacceptable lack of interest in the children reported as abandoned. It does not make reference to the child subject of this adoption. She was not reported together with others. Her case was allegedly reported by an individual and the initial report said as much. How would one know it is the same child?

8. Meanwhile on 5th December 2016 the child was released to AGC as Baby AB where she was admitted as AA despite the fact that the committal order bore the name AB. On 6th October 2017 the child AA a now with another name ANM was placed into the care and custody of the applicants.

9. This Originating Summons was filed on 30th May 2019. The applicants seek the following orders: -

- 1. THAT the minor be presumed a Kenyan Citizen.**
- 2. THAT the court dispenses with the consent of the biological parents to the minor.**
- 3. THAT LW of Post Office Box Number [.....] NAKURU in the Republic of Kenya be appointed Guardian *ad Litem*.**
- 4. THAT the Department of Children's Services, Nakuru County investigate the applicants' fitness to adopt and file a report.**
- 5. THAT the applicants be authorized to adopt BABY AA to be known as ANM.**
- 6. THAT JNM of Post Office [....] NAKURU in the Republic of Kenya be appointed Legal Guardian of the minor.**
- 7. THAT it is directed that the Registrar General shall make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.**
- 8. THAT the Registrar of Births and Deaths be and is hereby directed to issue the child with a certificate of birth in the name of ANM**

10. The same is supported by the applicants' statement and affidavit in support of the application, their medical records, certificate of good conduct and evidence of financial means, together with recommendations from family, friend and church. They also filed the affidavits and consents of the proposed legal guardian and guardian *ad litem*.

11. In addition, the two (2) adult children of the first (1st) applicant from his previous marriage also gave their written consents.

12. The guardian *ad litem* Lucy Wambui was appointed on 16th October 2019 and filed her report on 17th February 2020.

13. The applicants' documents are all in order save for the Adoption Agency's inadvertence.

14. The Children Officer's Report by the Director of Children Services was said to have been filed but at the time of writing this ruling it was not on file.

15. I heard oral testimony from the 1st applicant and the legal guardian. There are no issues there. However, final orders cannot issue without the Adoption Agency playing its role properly.

16. Without the report from Director of Children Services, I cannot make final orders.

17. I direct that the Deputy Registrar contacts the firm of Karen Wanderi and Company Advocates and the Children Officer to avail the same.

18. The Adoption Agency to also deal with the gaps in their documentation.

19. Mention on 28th May April 2020 to confirm compliance.

20. Parties are at liberty to seek online mention.

Delivered, Dated and Signed at Nakuru this 23rd day of April 2020.

Mumbua T. Matheka

Judge

In the presence of: -

Via Email by Consent of Mrs. Wanderi Counsel for the applicants.

Edna Court Assistant