



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 165 OF 2019

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

IN THE MATTER OF BABY P.S.M E.O.M.....1ST APPLICANT

P.T.M.....2ND APPLICANT

JUDGMENT

1. Vide an undated Originating Summons filed in court on 27th November 2019 pursuant to Sections 154, 156(1), 157(1), 158(1), 159(1), 161, 163, 164(1) and 170 of the Children's Act and Section 24 of the Interpretation and General Provisions Act, the applicants herein sought orders as hereunder;

- (i) That the applicants be authorized to adopt baby P.S. a minor to be known as PSM.**
- (ii) That the minor be presumed to be a Kenya citizen by birth.**
- (iii) That the Registrar General be directed to enter the adoption in the adopted Children's Register.**
- (iv) That the Director Immigration be authorized to issue the child with a Passport.**
- (v) That the court be pleased to make any further orders it deems necessary.**

2. The application is supported by a statement of particulars jointly sworn by the applicants on 9th September 2019 together with several documents thereof.

3. These adoption proceedings relate to a kinship adoption in which the 1st applicant herein is a brother to MM the biological father to the minor sought to be adopted. The applicants are husband and wife having solemnized their marriage on 18th December 2004 under Cap 151 of the Laws of Kenya at PCEA [Particulars Withheld] Parish. They are Kenyan citizens by birth but currently residing and working for gain in USA.

4. The applicants all adults were born 1970 and 1977 respectively. The couple is blessed with two (2) children namely; LSM (13 years) and SSM (11 years). The 1st applicant is a Systems Analyst by profession currently working at [Particulars Withheld] Bank of Middlebury Indiana USA. The second applicant is a Retail General Manager currently working at [Particulars Withheld] in Indiana a business co-owned with the 1st applicant.

5. They averred that the minor is their nephew and would like to adopt him to enable him receive better care and education as the biological parents already have three (3) other children whom they are taking care of amid serious economic challenges as they are not in any formal employment thus depending entirely on their relatives to survive.

6. That they received the minor from his biological parents starting January 2017 and since then, they have been looking after him.

7. On their part, the biological parents to the minor M Ole M and SEM swore an affidavit jointly on 13th September 2019 signifying their consent to their son (subject) being adopted by the applicants. They claimed to have 13 more children whom they are not able to cater for due to lack of finances as they are not employed. They confirmed that the applicants among other relatives have been supporting the minor and the rest of the family members.

8. They confirmed that they understood the consequences of adoption and that it was permanent in nature. Having presented a request to adopt the child, Change Trust Adoption Society conducted enquiries and necessary evaluation and assessment of the applicants. They

subsequently recommended the adoption vide their case committee held on 1st January 2019. The child was then declared free for adoption and a Freeing Certificate S/No. [...] issued to that effect.

9. Subsequently, the applicants moved to this court for formal adoption proceedings. Vide a Chamber Summons dated 13th September 2019, MT Ole K, was appointed guardian ad litem on 19th December 2019 and the Director Children Services directed to file an assessment and evaluation report within 45 days.

10. Subsequently, the Director Children Services filed his report dated 24th February 2020 recommending the adoption. He stated that; the applicants had virtually met the requisite legal requirements for local adoption; they are financially stable; the adoption is within the family hence not susceptible to risks; the child will not leave his family ties; he will benefit from good education in the U.S.A and that; the adoption will safe guard and protect the best interests of the child.

11. Equally, the Adoption society in their evaluation report of 20th October 2019 recommended the adoption. The guardian ad litem also filed his report dated 17th February 2020 supporting the adoption.

12. Due to the Corona Pandemic, hearing of these proceedings was with the consent of all parties pursuant to the Family Division PJ's Practice Directions conducted virtually thus dispensing with physical appearance of all parties and stakeholders.

13. I have considered the application herein, supporting documents and counsel's oral submissions. The crucial issues for determination are;

(a) whether the minor is available for adoption;

(b) whether the applicants have met the requisite requirements to adopt the baby;

(c) whether the adoption is in the best interests of the child.

14. Concerning the child, he is a Kenyan citizen aged 15 years old hence below 18 years and above 6 weeks the age bracket for a child to be adopted pursuant to Section 156(1) of the Children's Act. Further, the child has been declared free for adoption. Considering that this is a kinship adoption and that the child has been staying with his uncle and his family even before being declared free for adoption, the requirement for placement for 3months consecutive period as required under Section 157(1) of the Children's Act does not apply.

15. As regards consent from the biological parents as dictated by Section 158(4) of the Children's Act; the same has been furnished by the biological parents. Pursuant to Section 157(1) of the Children's Act, any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, was or was not born in Kenya. The subject herein is therefore qualified to be adopted. For the above reasons stated, the child is available for adoption.

16. Touching on the suitability of the adoptive parents, they are adults whose age falls between 25 and 65 years the statutory age bracket required for adoptive parents in compliance with Section 158(1) of the Children's Act. They have been described by reports filed by all stake holders as financially stable, experienced parents, medically, mentally, physically and psychologically fit. They are law abiding citizens having no criminal record. They have their own 6 bedroomed house whereby the minor occupies his own bed room. They have been rendering support to the minor, his siblings and even the parents.

17. Considering that this is a local adoption and that there is consensus within the adoptive family and the child's family, it is my finding that as Kenyans, the applicants have met the legal requirements necessary for adoption hence suitable to adopt the baby herein.

18. Is the adoption in the best interest of the child? The best interests of a child principal is the key consideration in determining the nature of any decision to be taken touching on the affairs of a child. This is a paramount requirement under Article 53(2) of the Constitution and Section 4(2) and (3) of the Children's Act (see **Re of Baby KR (2015)eKLR 2015**. Similar position was held in the case of In **Re CA and KA (both minors) (2014)eKLR** where the court held that:-

“It is therefore not in doubt that when a court determines any question with respect to:-

The upbringing of a child; or the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration.”

19. In the instant case, the minor herein is a nephew to the applicants who is in need of support and provision of basic necessities like food, education, shelter, clothing and medical care among other provisions. The applicants have come in handy and at the hour of need. They and their children have fully bonded with the minor. They all understand the consequences of this adoption. It will be in the best interests of the child to be adopted by parents who are ready and willing to relief the minor's biological parents a huge burden off their shoulder otherwise, the boy's bright future will be compromised if this application is rejected.

20. Having held as above, it is my holding that the applicants have met the necessary legal requirements to adopt the minor. Accordingly, the application is allowed with orders as follows;

(a) That the applicants are hereby allowed to adopt baby PSM a minor who henceforth shall be known as PSM.

(b) That the child's date of birth shall be 28th November 2004.

(c) That the Registrar General shall enter this adoption in the register of adopted children.

(d) That the Director Immigration shall issue the minor with a Kenyan Passport.

(e) The guardian ad litem is hereby discharged.

(f) That PKM is hereby appointed as the legal guardian to the minor in the event of death or any eventuality befalling the applicants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF MAY, 2020.

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J. N. ONYIEGO

JUDGE