



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 100 OF 2019

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

IN THE MATTER OF BABY R. N.

P.W.I.1ST APPLICANT

R.M.W.2ND APPLICANT

JUDGMENT

1. Through an Originating Summons dated 11th July 2019 and filed on 18th July 2019, P.W.I and R.M.W herein referred to as the 1st and 2nd applicants respectively, moved this court pursuant to Sections 154, 156, 158(1) & 4(a), 160, 163, 170 of the Children's Act and Section 9 of the Citizenship and Immigration Act seeking orders as follows;

(i) That they be authorized to adopt baby R. N and that the said child be known as SPIW.

(ii) That the child having been found abandoned at Kaaga area Imenti North in Meru be presumed to be a Kenyan citizen born on xxxx in Meru.

(iii) That BNM and EGK of Post Office Box Number 21 Ngegwa be appointed legal guardians to the child in the event misfortunate befalls the applicants.

(iv) That the consent of the biological parents be dispensed with.

(v) That the Registrar General makes the appropriate entries into the Adopted Children Register.

2. The application is supported by the applicants' joint statement in support of an application for an adoption order dated 11th March 2019 and an affidavit sworn the same day.

3. The applicants are Kenyan citizens aged 46 and 47 years respectively. They are engaged in a monogamous marriage having celebrated their marriage on 4th November 2000 at [particulars withheld], Nairobi. To earn a living, the 1st applicant is engaged in various businesses among them operating a matatu business while the second applicant is currently working at [particulars withheld]. The couple has been blessed with two (2) children namely; AWW aged 14 years and MWW 12 years old.

4. Their urge to adopt the baby has been prompted by the desire to give back to society by giving a needy child a better opportunity at life and raise them in a loving home. Secondly, they would like their daughters to have a brother.

5. Concerning the minor, the subject of these proceedings, he is presumed to have been born on xxx as per the birth certificate S/No. xxx . He is said to have been found abandoned outside the gate of one PK and IK. The incident was reported at Meru Police Station vide O.B No. xxx. Following the intervention of the Children Office, the child was temporarily admitted at Neema House Infant Rescue Centre pending necessary legal committal proceedings.

6. He was formally admitted to the said institution on 14th February 2018 vide Meru Children's Court Protection and Care Case No. 4/2018. Despite every effort to trace the minor's parents and or relatives, none was traced. This is evidenced by the initial and final police letters dated 11th February 2018 and 11th May 2018 respectively. On 23rd February, 2018 his photo was published on the classified of the Standard Daily Newspaper under the public notice segment seeking for information regarding any of his family members but to no avail.

7. Consequently, after six months, the child was subjected to the legal process of adoption. Vide a case committee hearing held by Little Angels Network Adoption Society on 13th April, 2018 the child was declared free for adoption and a certificate to that effect S/No. xxx issued on 31st May 2018. He was placed under the care and control of the adoptive parents for a mandatory three (3) months consecutive period on 23rd May 2018.
8. Having instituted adoption proceedings, the applicants sought the appointment of CWK as the guardian ad litem vide Chamber Summons dated 11th July 2019. On 26th September 2019, the proposed guardian ad litem was appointed as requested and the Director Children Services directed to file an assessment and evaluation report within 45 days.
9. Prior to the hearing which was conducted electronically owing to the Coronal Virus Pandemic, the Director Children Services had filed his report dated 11th November 2019 thus recommending the adoption on grounds that the applicants had met the requisite criteria for adoption and that it was in the child's best interests. Equally, the guardian ad litem and the Adoption Society Little Angels filed their respective favourable reports dated 31st October 2019 and 31st May 2018.
10. During the hearing, the court dispensed with the physical attendance of the parties on the ground that courts were not operating normally due to Corona Virus and that the applicants having appeared together with the minor when the guardian ad litem was appointed without any objection recorded, it was not fatal even if they did not appear during the main hearing.
11. Counsel for the applicant canvassed the application urging the court to adopt the pleadings and more particularly the applicants' affidavits in support of the application and the annexures thereof. The applicants expressed their acknowledgement and understanding that the adoption has consequences and that it is permanent.
12. I have considered the application herein, affidavits in support together with the annexures thereof. This is a local adoption given that both applicants are Kenyan citizens. The minor herein was found abandoned outside somebody's gate. Despite every effort being made through the print media and police enquiries as confirmed by their letters aforesaid, nobody has come forward to claim the child.
13. Pursuant to Article 14(4) of the Constitution, the child herein is presumed to be a Kenyan citizen. The said provision recognizes that, a child found in Kenya and who is, or appears to be, less than 8 years of age and whose nationality and parents are not known is presumed to be a citizen by birth.
14. Besides, Section 157(1) of the Children's Act provide that-
- “Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya.”**
15. The child is above six (6) weeks and below 18 years which is the requisite age bracket for a child to qualify for adoption (see Section 156(1) of the Children's Act). He has been declared free for adoption and effectively placed under the care and control of the applicants for a continuous period of three months pursuant to Section 157(1) of the Children's Act. Since the child does not have any known relative/s or parents, it is my holding that the baby is available for adoption.
16. Are the applicants suitable to adopt the child? The applicants are adults aged below 65 years and above 25 years being the mandatory age requirement for any adoptive parent seeking to adopt a baby pursuant to Section 158(1) of the Children's Act. They are Kenyan citizens thus placing the application herein as one of local adoption.
17. They have been assessed and evaluated by various stake holders and found suitable in terms of the set criteria. They are financially stable, physically, mentally, morally, socially and emotionally fit. They have no criminal record and does appreciate the consequences of adoption. In the circumstances, I have no doubt that the applicants have met the necessary legal requirements to adopt the baby.
18. Is the adoption in the best interest of the child? The paramount factor for consideration before making any decision affecting affairs of a child is the child's best interest. This principle is articulately covered under Article 53(2) of the Constitution and Section 4(2) and (b) of the Children's Act.
19. It is clear from the circumstances of this case that, the child was abandoned by unknown persons outside the gate of somebody. The intention obviously was not in the best interest of the child. The child was exposed to environmental risks which could have resulted to his death. After his rescue, declared free for adoption and subsequent placement to the applicants, the child has fully integrated with the adoptive family. The applicants' biological children do regard the minor as a brother.
20. The child is enjoying favourable parental guidance and support besides provision of basic necessities like food, clothing, shelter, medical care and education. He is assured of a bright future including inheritance and generational identity.
21. It is my holding that the adoption herein is in the best interest of the child. Accordingly, the application is allowed with orders as follows;

a) That the applicants are hereby authorized to adopt baby R.N who henceforth shall be known as SPIW.

b) That the child is presumed to be a Kenyan citizen.

c) That his date of birth shall be xxx and place of birth Meru County Kenya.

d) That the consent of his biological parents is dispensed with.

e) That the Registrar General is directed to enter the adoption order in the Adopted Children's Register.

f) That the guardian ad litem is hereby discharged.

g) That BNM and EGK be and are hereby appointed as legal guardians to the child in the event of death or eventuality befalling the applicants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF JUNE, 2020.

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J. N. ONYIEGO

JUDGE