



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

ADOPTION CAUSE NO. 10 OF 2019

IN THE MATTER OF APPLICATION FOR ADOPTION OF TOM

JUDGMENT

1. The cause herein, initiated by way of Originating Summons, dated 16th December 2019, has been filed by ZOM and JOU, adults and residents of Nairobi and Kitale, within the Republic of Kenya, who I shall hereinafter refer to as the applicants, seeking to adopt TOM, to be known hereafter as the child, who is progeny of the first applicant's late sister, GAA.

2. The child was born on 5th July 2013, and his mother died during delivery. The applicants took him in, and started living with him as if he was their own. They are currently residing at New Donholm Estate, within Nairobi, where the child attends school. The father of the child is unknown, and, since the death of the mother, no one has ever come forward claiming to be the father of the child.

3. The originating summons was heard on 6th July 2020. The applicants submitted that the adoption was within the family, and prayed that they be allowed to adopt the child as prayed, as that would be in the best interests of the said child. The guardian *ad litem*, GVC, had filed a report, dated 10th February 2020. She had done the visits to the home of the applicants, and had evaluated them, and found them suitable to adopt the said child. She confirmed the contents of her report at the hearing, by stating that the applicants were the best suited to take care of the child. The same sentiments were expressed by the Kakamega Central/Navakholo Children Officer, SM, in his report dated 23rd March 2020, filed herein on even date. A similar report by the adoption agency, KKPI Adoption Society, dated 14th February 2020, is also favourable.

4. Having considered the pleadings filed herein, the affidavits in support and the submissions by the applicants, plus the reports placed before the court by the various actors in the matter, I find that the issues for me to determine are whether the child herein is available for adoption, whether the applicants have met the requisite conditions for adoption, and whether the proposed adoption would be in the best interests of the subject child.

5. Section 156 (1) of the Children Act, Cap 141, Laws of Kenya, provides as follows:

“(1) No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with this rules prescribed in that behalf.”

6. Under Article 14(4) of the Constitution, 2010, a child found in Kenya, who is, or appears, to be less than eight (8) years of age, and whose nationality and parentage are not known, should be presumed to be a Kenyan by birth. Section 157 (1) of the Children Act provides 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.

7. The child herein should be, for all purposes and intents, constitutionally and statutorily, presumed to be a Kenyan citizen. Secondly, pursuant to section 156(1) of the Children Act, the child herein is over six (6) weeks old, the minimum age required for a child sought to be adopted. For the reasons herein stated, the child is available for adoption. The subject child was declared free for adoption, under section 156(1) of the Children Act, on 24th September 2019, by KKPI Adoption Society, vide their certificate number 659.

8. Regarding the applicants suitability to adopt the child, the records show them to be both Kenyan citizens, aged sixty-four (64) and fifty-five (55) years, respectively, which age properly falls within the age bracket of not less than twenty-five (25) years old and not more than sixty-five (65) years, in compliance with section 158(1) of the Children Act. The applicants are in gainful employment, and jointly ran a business and a farm, which gives them a monthly income of Kshs. 150,000.00. They have no criminal record, as reflected in the certificates of good conduct placed on record. They are also medically, physically, mentally and emotionally fit.

9. This is a kinship adoption, as the first applicant, ZOM, is related to the subject child, as the child's biological mother was his sister. The court in, *re JNA* [2018] eKLR, stated as follows with regard to kinship adoptions:

“According to the Guidelines for Alternative Family Care of Children in Kenya page 153, “kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child.”

10. The applicants herein are kin to the child, and are, therefore, family to the child, and they are best suited to take care of the child. As stated earlier, the biological father of the child is unknown, and no one has come forward to lay claim to the child, in that respect, for all these years since his mother's death. The material presented in court, through the three reports, leave no doubt at all, in my mind, that indeed the applicants are the most suitable persons to care for the subject child. I, therefore, find that the applicants have met the requisite requirements for adopting the said child.

11. As to whether the adoption of the child herein is in his best interests, it has been stated by the Children Officer, in his report, that the child looked healthy and happy living with the applicants, and that he had got used to them and they had been providing for all his needs.

12. In *Re Baby PSM* [2020] eKLR, the court observed, that:

“The best interests of a child principle 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.”

13. In the end, I find, through the three reports, that the Originating Summons herein, dated 16th December 2019, is merited, and I hereby allow it in terms of prayers 2, 3, 4, 5 and 7, thereof. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 30th DAY OF July, 2020

W. MUSYOKA

JUDGE