



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBSA

ADOPTION NO. 4 OF 2018

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY KM(MINOR) BY

SMM

MSJ.....APPLICANTS

VERSUS

KKPI ADOPTION SOCIETY.....RESPONDENT

JUDGMENT

1. Through an originating summons dated 22nd February, 2018, brought pursuant to Sections 154, 156, 157, 185, 160 and 170 of the Children's Act, the applicant herein sought for orders as follows;

- i. That LWK be appointed Guardian Ad Litem.**
- ii. That SMM and Mercy SJ be authorized to adopt KM (minor)**
- iii. That the name of KM to change to baby ZIM.**
- iv. That the child KM be declared a Kenyan citizen.**
- v. That the children officer to prepare and file a social report**
- vi. That the Registrar General be directed to enter the name of the child in the adopted children register in the prescribed form.**
- vii. That costs of this summons be costs in the cause**

2. The application is supported by an affidavit jointly sworn on 22nd February 2018 by the applicants and a certificate of undertaking of even date.

3. The applicants are adult Kenyan citizens. They solemnized their Christian marriage in the year 2003 at Jesus touch the World Ministry. The couple has not been blessed with any biological child so far. Their intention to adopt the baby has been motivated by the desire to expand their family and that it will be in fulfilment of their dream to adopt a baby which idea was conceived before they started courting.

4. Regarding their economic status, the adoptive father (1st applicant) is a casual worker at [particulars withheld] Bank now stationed in Mombasa while the second applicant is a hair dresser managing her own salon. Their combined monthly income is estimated to be kshs 118,000 per month.

5. Regarding the child presumed to have been born on 3rd August 2016, she was on 4th August, 2016, found by good Samaritans along the road side near [particulars withheld] Secondary school where she was abandoned. The incident was reported at Elburgon police station under OB No. 37/04/08/2016.

6. Subsequently, she was temporally placed at New life home trust Nakuru for care and protection. On 10th August, 2016, the minor was

formally committed to the same institution for protection and care under Protection and Care Case No 427/2016 Molo Children's court.

7. Despite every effort to trace the parents and her relatives by the police Elburgon Police station and the KKPI adoption Society nothing came to fruition. Six months having lapsed since the minor's abandonment, adoption process commenced. In its case committee meeting held on 22nd February 2017, KKPI adoption society declared the child free for adoption in compliance with section 156 of the Children's Act. A freeing certificate S/NO.568 was issued to that effect. She was subsequently placed under the care and control of the applicants in March 2017 for the mandatory continuous three months' care and control period. She has since been in the applicants' custody to date.

8. Upon instituting these proceedings, the applicant in the said Originating summons prayer one sought the appointment of LWK as Guardian Ad litem. On 4th April, 2018 the proposed Guardian Ad Litem was appointed. She was directed to file an evaluation report. The children officer Kilifi county was directed also to file asocial report in respect of the child.

9. Prior to the hearing, the KKPI Adoption Society, Director children services and Guardian Ad litem filed their respective social inquiry reports dated 3rd April 2018, 29th June 2018, and 5th July 2018 thus recommending the adoption. Both stakeholders' reports described the applicants as being financially stable, responsible people, Christians with no criminal record, loving parents and that they understood the consequences of adoption proceedings. Above all, they recommended the court to allow the adoption on grounds that it was in the best interests of the child.

10. During the hearing, the applicants testified confirming their desire to adopt the baby. They expressed their love to the baby whom they promised to take care of like their biological child. They also acknowledged that they understood the consequences of adoption and that it was permanent. The Director Children Services, KKPI Adoption society and the guardian ad litem equally produced their respective reports supporting the adoption.

11. I have considered the application herein, supporting materials and reports from statutory stakeholders. Issues that arise for consideration are;

i. Whether the child is legally available for adoption;

ii. Whether the applicants are suitable to adopt the baby;

iii. Whether the adoption is in the best interests of the child.

12. The child herein was found by passersby on the road side near [particulars withheld] secondary school within Molo area. The child who appeared to be one day old was taken to Elburgon police station. According to the final letter from Elburgon police station, dated 22nd February, 2017 nobody has laid claim over the baby.

13. The child was later declared free for adoption and subsequently placed under the care and control of the applicants. Since then, the child has enjoyed the love and care of adoptive parents just like any child with her or his biological parents. She has fully bonded with the adoptive parents and the extended family members who are in support of the adoption.

14. Under Article 14 (4) of the Constitution, a child found in Kenya who is, or appears to be less than eight years of age, and whose nationality and parents are not known, is presumed to be a Kenyan citizen by birth. Taking into account the circumstances under which the minor herein was found and considering that she was about two days old when she was found abandoned on the roadside, Article 14(4) of the Constitution comes to play. To that extent, the child is presumed to be a Kenyan citizen

15. Having held that the child is presumed to be a Kenyan citizen, section 157 (1) of the children Act becomes relevant and applicable. For avoidance of doubt, I wish to reproduce the said provision which provides that;

“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”.

16. The child is above 6 weeks and below 18 years which is the requisite age bracket for any child to be adopted pursuant section 156 (1) of the Children's Act. Since nobody has come forward to claim the child and this being a local adoption, it is my finding that the child is available for adoption.

17. Regarding the applicant's suitability, they are Kenyan adults who are aged above 25 and below 65 years being the requisite age bracket for parents seeking to adopt a baby in compliance with section 158 (1) of the children's Act. Economically, the applicants have a combined monthly income of about Kshs118,000 implying that they have the financial base to provide for the baby.

18. Spiritually, they are Christians with no criminal record which underscores the requirement of people of good character and therefore have the capacity to mentor and provide spiritual guidance and inculcate good moral character. They are physically and mentally fit.

19. They have acknowledged that they understand the consequences of adoption and that it is permanent. They have provided a legal guardian who will take care of the child in case of any eventuality befalling them. The baby has fully bonded with the applicants a sign of love and care for the baby. It is my conviction that the applicants are suitable to adopt the baby.

20. Whether the adoption is in the best interests of the child, the answer lies in Article 53 (2) of the Constitution and section 4 (2) and (3) of the Children Act which underpins the principle that, in every decision affecting the affairs of a child, the best interests of the child must be

taken into consideration.

21. Further, Article 3 of the United Nations Convention on the rights of a child does underscore the paramountcy of the best interests of a child as follows;

“In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, legislative bodies, the best interests of the child shall be a primary consideration”.

22. In the instant case, the child having been abandoned, consents from her parents is not necessary. She is now in a safe environment enjoying life like any other normal child. A child abandoned on the road side when aged one-day old was intended to die. With the applicants, the baby is receiving necessary attention and protection befitting a child. She is enjoying basic necessities like food, shelter, clothing, medical care and education. She is assured of something to inherit, has a bright future and above all acquisition of generational identity.

23. In view of the above holding, I am inclined to allow the application with orders that;

- a. **The applicants are hereby allowed to adopt baby KM who shall henceforth be known as ZIM.**
- b. **That her date of birth shall be 3rd August 2016 and place of birth Elburgon Molo Nakuru County Kenya.**
- c. **That consent of the biological parents is dispensed with.**
- d. **That the child is presumed to be a Kenyan citizen.**
- e. **That the Registrar General is directed to enter the adoption in the adopted children register.**
- f. **That the Guardian ad litem is hereby discharged.**
- g. **That VA shall be the legal guardian of the child in the event of any eventuality befalling the applicants.**

Dated, signed and delivered virtually this 18th day of December 2020

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J.N. ONYIEGO

JUDGE