



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 163 OF 2017

IN THE MATTER OF THE CHILDREN'S ACT 2001

AND

IN THE MATTER OF BABY M AKA EDDY (INFANT)

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY AO AND BMM

(Under Section 154, 158 & 160 of the Children's Act 2001 Section 3A of Civil Procedure Act Cap 21 Laws of Kenya)

JUDGMENT

1. By originating summons dated 13th November 2017 and filed on 16th November 2017, the applicants herein **AOO** (herein referred to as the 1st applicant) and **BMM** (herein referred to as the 2nd applicant) sought orders particularized as hereunder;

i. That the Honorable Court be pleased to appoint **FOW** of P.O. Box 35448-00100, Nairobi as Guardian Ad Litem for the infant **BABY M also known as E.**

ii. That the director of Children Services do file an evaluation and assessment report on the infant and on the suitability of **AOO** and **BMM** to be authorized to adopt **BABY M also known E** (infant).

iii. That if the adoption order is granted the said infant be known as **AN.**

iv. That the Registrar do enter the said proposed name in the adoption Register.

2. Application is premised on grounds on the face of it, statement in support of the application for an adoption order dated 13th November 2017 and joint affidavit in support deposed by the applicants on the same date. The applicants herein who are Kenyan Citizens got married sometime 2012 under Luo customary law and thereafter formalized the same at the D.C'S office Laikipia on 8th January 2016. In terms of age, they are aged 35 and 31 years respectively. Professionally, the applicants are in formal employment with the 1st applicant working as an engineer with WFP and the 2nd applicant as a teacher at [particulars withheld] School in Kisii.

3. The minor herein who is the subject of these proceedings presumed to have been born on the 5th June 2016 was found abandoned by unknown persons at Utawala near AP Camp. He was rescued by good Samaritans (JE and TM) who took her to Embakasi police Station and reported the matter vide **OB No.56/05/06/2015**. Police via their letter dated 5/06/2015 sought admission of the baby to Thomas Barnados Home for care and protection pending investigations. Through their final their letter dated 29th January 2016, police wrote to the said home stating that the child's biological parents could not be located. The child was on 9th October 2015 committed to Banardos Children home for care and protection by the Nairobi children's Magistrate's Court, under care and Protection case no 232 of 2015.

4. Through the case committee held by Kenya Children's Home Adoption Society on 14th December 2016, the baby was declared free for adoption and issued with a certificate s/No.[particulars withheld]. The child was placed with the applicants on 2nd March 2017 for mandatory bonding as confirmed by the care agreement dated and signed by the applicants on the same day.

5. Pursuant to a chamber summons dated 13th November 2017 and filed on 16th November 2017, **FOW** was appointed as guardian ad litem on 4/10/2018. Within 45 days, the director children services was directed to file an assessment and evaluation report of the applicants and their suitability to adopt.

6. Prior to the hearing, the Kenya Children's Homes Society, director children services and guardian ad litem filed their respective assessment and evaluation reports on 20th April 2018, 16th January 2019 and 27th February 2019 respectively thus recommending the adoption. During the hearing, the applicants expressed their desire to adopt the baby and also confirmed having understood the consequences of the adoption.

7. I have considered the application herein, affidavits in support and testimony by both applicants plus materials placed before the court. Issues for determination are:

a. Is the baby herein available for adoption;

b. Have the applicants met the requisite conditions for adoption;

c. Is the adoption in the best interest of the baby.

8. The baby who is the subject of these proceedings was abandoned at Utawala near AP Camp by an unknown person. As evidenced by police letters dated 5/06/2015 and 29/01/2016, their effort to trace the mother and or relatives has been futile. To that extent the baby has not been claimed by anybody and the requisite consent as required by Section 159 (1) of the Children's Act is dispensed with. The baby was declared free for adoption on 14th December 2016 by which time the baby was over 6 weeks a mandatory minimum age limit required of a child before adoption in compliance with Section 158 (1) of the Children's Act.

9. According to Section 157 (1) of the Children's Act, "any child who is a resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya provided that no application for an adoption order shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants as the case may be evaluated and assessed by a registered adoption society in Kenya.

10. The baby has been under the continuous foster care and control of the applicants for over three months in compliance with Section 157(1). The baby who is below 18 years is presumed to be a Kenyan citizen courtesy of Article 14 of the Kenyan constitution. Having complied with the necessary conditions before adoption, it is my finding that the baby is available for adoption.

11. Are the applicants suitable to adopt the baby? The adoptive parents are Kenyan citizens thus qualifying the adoption herein as a local adoption. They are aged between 25 years and 65 years being the mandatory age requirement for both or either applicant before adopting any baby in compliance with Section 158 (1) of the Children's Act. They are fully aware of the consequences of this adoption and appreciate its consequences. Having been duly assessed and evaluated by both the children department, guardian ad litem and Little Angels Adoption Society, they were found to be medically, emotionally, mentally, morally and economically fit and stable. To that extent, the two are suitable persons for purposes of this adoption.

12. Is the adoption in the best interests of the baby? The best interests of a child principle is aptly captured in the Kenyan Constitution Article 53 (2) which provides:

"A child's best interests are of paramount importance in any matter concerning a child".

Besides the constitution, Section 4 (2) and (3) of the Children's Act reinforces the same principle.

Sub Section 2 provides:

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

(See – In **Re A.W alias AN (a child) (2008) I KLR (G and F)**).

13. Having been abandoned and now unclaimed, the baby has no known relative or family. He is in need of care and protection and a family to identify with. The applicants are both employed with a reasonable income hence are financially able to cater to the baby's basic needs including shelter, food, clothing, education and medical care.

14. The applicants appreciate their responsibilities and obligations towards raising the baby and his right to inheritance. The baby is guaranteed a safe home, economic, moral and psychological support. From the reports by the department of children services and the guardian ad litem the baby has fully bonded with the adoptive parents.

15. From the foregoing I find that it is in the best interests of the baby that he be adopted by the applicants and therefore make orders as follows:

i. That the applicants herein **AOO and BMM** are hereby authorized to adopt **BABY M also known as E (infant)** who shall henceforth be known as **AN**.

ii. That the baby's date of birth shall be 5th June 2015 and his place of birth shall be Utawala Nairobi County Kenya

iii. That the Registrar General be and is hereby directed to enter the adoption order in the children's adoption register.

iv. That the Director Immigration be and is hereby directed to issue the child with a Kenyan passport.

v. That the guardian ad litem be and is hereby discharged.

vi. That **OBOO** a brother to the 1st applicant be and is hereby appointed as legal guardian in the event the applicants dies or are incapacitated by any eventuality before the child attains the age of maturity.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 11TH APRIL, 2019.

J.N. ONYIEGO

JUDGE