



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

ADOPTION CAUSE NO. 1 OF 2018

COM & ANOTHER.....APPLICANTS

AND

KENYA CHILDREN HOME

ADOPTION SOCIETY & ANOTHER.....RESPONDENTS

RULING

This is an originating summons filed by the applicants on their own behalf by Dulo & Co Advocates apply for various orders but more imprudently that;

- (1) The applicants herein referred as C.O.M and M.A.A be authorized to adopt baby minor referred to as Z.T.M.**
- (2) That one referred to as V.M.A and C.A.A be appointed as legal guardians to baby Z.MT in the event the applicants are permanently incapacitated or die before the infant attains the age of maturity.**
- (3) That a birth certificate be issued by the Registrar persons in respect of baby Z.M.T.**
- (4) That the costs of this application be provided for.**

The said application is brought under Section 154, 158, 159 and 160 of the Children's Act, Section 24 of the interpretation and general processes Act cap. 2 Section 3A of the Civil Procedure Act.

In their supporting affidavit the applicants have stated this is a kinship adoption by virtue of their relationship with the mother of the deceased who has since passed on. That following the death of the mother, the minor has been under the physical custody of the legal guardian V.M.A and has consented to this application.

According to the applicants they are Kenya citizens but currently resides and are in gainful employment in the United Kingdom. The applicants further averred that if granted custody of the minor they are in a position both financially and emotionally capable of supporting and taking care of her needs and to still leave enough for their own use.

Brief Background:

The child whom I shall refer as Z.M.T was born on 22nd February 2107 to the late EAMA. The deceased who was a single mother died on 10th October, 2017 leaving the care of the child under the temporary custody of V.M.A and C.A.A. She has since been living with the V family as foster care givers until the initiation of this application.

The care proceedings were commenced by the Kenya Children's Homes to have the minor adopted by the applicants under the kinship scheme of arrangement. The Kenya Children's Homes Commenced assessment inquiry of the applicant's background and suitability to offer a home, protection, maintenance, care and welfare to the minor subject matter of this application.

In their report dated 16th February, 2018 pursuant to Section 156 and 158 of the Children's Act the agency reaffirmed and submitted substantially that the applicants have met the statutory requirements to be granted the order. The Director of Children's Department further conducted a social inquiry and prepared a report on suitability of the applicants dated 1st March 2018. At this stage both the adoption agency, the child, guardian and the Children's services directorate point to the direction the adoption order in favour of the applicants will be

in her best interest.

The purpose of the adoption hearing is for the court to establish whether the facts are such that they meet the threshold for adoption order to issue. Section 157(1) sets out the criteria of the children eligible to be adopted. Under Section 158(1) of the Act it provides the threshold to be met by the adoptive parents as herein under stated:

(1) An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants has attained the age of twenty-five years and is at least twenty one years old than the child but has not attained the age of sixty five years or is a relative of the child or is the mother of the child. In the same section an adoption order shall not be made if the applicants falls within any of the exclusion clauses in subsection (2a – e and 3 –a-f)

In section 159(1) the adoption court has been clothed with powers to dispense with the consent required of the biological parents or mother of the children if it is satisfied that:

The child is suffering, abandoned, neglected, persistently failed to be maintained or persistently ill-treated by the parents or guardian.

It is only when the legal threshold is crossed can this court consider making the order that the adoption agency and children’s department seeks to promote the best interest of the child.

In the instant case the child in question was born to a single parent who has been confirmed dead. The father’s whereabouts remained unknown at the time this proceedings commenced and concluded. I accept the findings made by the adoption agency in this issue under Section 159(1) of the Act any such parental consent from unknown father is not applicable. In exercise of the powers under Section 159, I therefore dispense with the consent of any of the biological parents of the child.

Having considered the application, the relevant provisions of the law, the reports from the Children’s department and the local adoption agency regally recognized to deal with matters involving the best interest and welfare of the child I find the originating summons has merit for the grant of an adoption order. In the present application this being a kinship adoption the court is satisfied that the condition set in Section 158(1) for making the order have been proved on a balance of probabilities. It follows therefore that it would be in the best interest and welfare of the child Z.M.T be adopted by the applicants.

Accordingly the orders prayed for in the Originating Summons dated 6th of February, 2018 and filed in court on 7th February, 2018 be and is hereby allowed in its entirety.

Dated, delivered in open Court on this 20th day of March, 2018.

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R. NYAKUNDI

JUDGE

In the presence of:

The applicants

Dulo counsel for the applicants