



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CIVIL ADOPTION CASE NO. 1 OF 2017

(CORAM: J. A. MAKAU – J.)

IN THE MATTER OF THE CHILDREN'S ACT, CAP 586 LAWS OF KENYA

IN THE MATTER OF AN APPLICATION BY C O A AND A J O – APPLICANTS

AND

IN THE MATTER OF ADOPTION OF B M ALIAS T O O – INFANT

RULING

1. The Applicants COA and AJO through an originating summons dated 20th November 2017 brought to court pursuant to **Part XII of the Children's Act and Rule 4 Adoption Rules (Cap 686) Laws of Kenya**, seeks the following orders: -

a) The Applicants be authorized to adopt a baby boy BM alias TOAO.

b) That if the adoption order is granted, the child be called TOAO and the Registrar General to make an entry into the adopted Children's Register recording the adoption in accordance with particulars as shall be set out in the adoption order.

c) Costs of the application be in cause.

2. The summon is grounded on the grounds on the face of the Applicant being as follows:-

(i) The child was given up for adoption by New Life Home Trust, Kisumu.

(ii) Following his abandonment, the child was given to the Applicants by Little Angels Adoption Network Society and have since been in their case.

(iii) That the child has a chance of living a suitable family set-up that the Applicant is will and able to offer.

(iv) That no previous application has been made relating to the adoption of the child.

3. The Originating Summon is supported by supporting affidavit by Peter Daniel Onyango, Advocate in conduct of this matter; statements in support of the application for the Adoption Order by AJO and COA both dated 16th November 2017; affidavit of Guardian M O dated 16th March 2017; certificate to declare a child free for Adoption under **Section 156(i) of Children Act and Adoption Regulation** in respect of BM; Declaration Report dated 14th March 2015 over BM by Change Trust recommending BM be declared free for adoption; letter by Shinyalu Police Station Post dated 30th March 2015; letter by New Life Home Trust; letter of placement of a child to New Life CCI dated 10th April 2015; courts committal order of BM, New Life Home Trust dated 27th May 2015, and medical particulars of a child BM dated 14/10/2015.

4. On 15th March 2015, Mr. Bagada appearing for both applicants presented the applications in camera by calling both applicants who gave evidence in support of their application. The two reiterated the contents of their respective affidavits. Their application is supported by several annexures thereto. The two are jointly willing to adopt BM, a baby boy who they have been with for about 2 years now. They are civil servants with stable income and able to sustain a family and the two have been married for close to 30 years now and have never experienced disagreement in their marriage to date. The 1st applicant is now 54years whereas the 2nd applicant is now 53years. They have one child which they adopted though this court in HCCMISCADOPT Case No. 1 of 2016, who they are in good terms with and have cared for very well. The child they are seeking to adopt BM is a Kenyan by birth of African descent and is a male. That the child was declared free for adoption by the Adoption Committee to both applicants and adoption process has been conducted as per filed report dated

14/11/2015 and declaration letter dated 14th March 2015. The applicant's motives to adopt the child BM are good and free from any influences.

5. The Applicants' intention is to stay with the child within the Honourable Court's jurisdiction, to Siaya, upon his adoption and thus monitoring his development and welfare under their care shall be easier, that their intention is to be able to protect, support, provide inheritance for and maintenance of the child as their own. That the New Life Home Trust, Kisumu has not in any way received and agreed to receive and has not made or given or agreed with the Applicants for them to make any payment or receive a reward in consideration of the adoption, that they had not made prior application for an adoption order in respect of the said child BM and the Applicants pray to be allowed to jointly adopt the child BM alias TOAO.

6. The Applicants filed statement in support of an application for an adoption order dated 16th November 2017. In support of the application, M O of ID. No. **[particulars withheld]** filed an affidavit of guardian deponing that she knows the two applicants COA and AJO as adopter of one child and are capable of offering good family environment to relatives, the adopted child and that she is certain the minor sought to be adopted shall get a good home as the two are people of integrity.

7. Prior to the hearing of the adoption, the Adoption Society New Little Angles Network prepared a report which is filed in court. They also issued certificate declaring the child free for adoption. The certificate is dated 14th November 2015. The Director of Children's Services prepared a report which is on record. The guardian **ad Litem** prepared a report which is duly filed. I have perused all the reports and I have found them favourable and recommending the proposed adoption.

8. I have evaluated the facts of the adoption application and all affidavits in support of the adoption. This is a local adoption. The applicants are husband and wife, who wish to adopt a male child. Under **Section 158(1) of the Children Act**, an adoption order may be made upon the application of joint two spouses where the applicants or at least one of them is a joint applicant. The two applicants herein seek joint adoption and their ages are between 53 and 54 and are at least 21 years older than the child who is now 3 years old, they are not related to the child nor do I find anything that bars both of them from adopting the child.

9. Under **Section 159 of the Children's Act**, Court may dispense with any consent required under *paragraph (a), (b) and (c) of sub-section 4 of Section 158*, if certain conditions are satisfied. I have considered the facts of this adoption cause and I am satisfied that this is one of the cases in which consent of everyone who is a parent or guardian of the child should be dispensed with as the parents are not know and no one has raised any objections as the child was found abandoned.

10. Having considered all the supportive documents and the relevant provisions of the law, I am satisfied that the Applicants have satisfied all the legal requirements relating to the adoption for the child BM alias TOAO. I have dispensed with the consent of the biological parents of the child for reasons stated herein above. I am satisfied the two applicants are qualified and able to take care of the child. The home visit by the guardian **ad Litem** the Adoption Society and the Director of Children's Services established that the applicants have financial and emotional capacity to provide for the upkeep and education of the child. The court observed that the Applicants while with the child and the child adopted earlier on, were a happy family. It was evidence from the period that the applicants have had the custody of the children, the children had bonded very well with the two applicants. The children consider the applicants as their parents.

11. The Court after considering all the facts of the adoption application is of the view that it would be in the best interest of the child to be adopted jointly by the two applicants. I shall therefore allow the application for adoption. The applicants COA and AJO are hereby allowed to adopt baby BM alias TOAO. He shall henceforth be known as BM alias TOAO and MO (ID/[particulars withheld]) shall be the legal guardian to the child should such eventuality arise. I direct the Registrar General to enter this adoption order in the Adoption Register. I hereby discharge the guardian ad Litem.

Orders accordingly.

DATED AND SIGNED AT SIAYA THIS 20TH DAY OF APRIL 2018.

HON. J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT.

In the presence of:

Mr. Bagada: for the Applicants

Court Assistants:

1. Laban O. Odhiambo

2. Brenda Ochieng

HON. J.A. MAKAU

JUDGE