



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 105 OF 2017

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

AND

IN THE ADOPTION OF BABY A K (MINOR)

S M K )

J W K ).....APPLICANTS

JUDGMENT

1. Through an Originating Summons dated 24<sup>th</sup> July 2017 filed under Sections 157 and 160 of the Children's Act, the applicants herein M K (hereinafter referred to as the "1<sup>st</sup> applicant") and J W K (herein referred to as the "2<sup>nd</sup> applicant") sought orders as hereunder:

- (1) That the consent of the biological parents of Baby A K be dispensed with since the infant was abandoned by his biological mother.**
- (2) That the applicant be authorized to adopt Baby A K and the child be called G K M henceforth.**
- (3) That the Registrar General do make the appropriate entries in the adopted children's register in respect of Baby G K M.**
- (4) That the court does issue other orders as may be necessary in the best interest of the child.**

2. The application is premised on grounds on the face of it and affidavit in support deposed jointly by the applicants on 24<sup>th</sup> July 2017. The applicants herein who are Kenyan citizens by birth are staying together as husband and

wife having contracted and celebrated their marriage in accordance with Kikuyu Customary Law the year 2005. The couple has not been privileged to get their own biological children hence the reason for adoption. They have however adopted another baby though in a separate file to serve as a sibling to the minor in this case.

3. The first applicant is a [particulars withheld] who is also working as a manager with [particulars withheld] earning a gross monthly income of 50,000/=. On the other hand, the 2<sup>nd</sup> applicant is a [particulars withheld] and a [particulars withheld] by profession thus earning a gross monthly income of 51,000/=. Besides, they own agricultural land measuring 0.2023Ha in Murang'a and a PSV motor vehicle registration No. [...] to supplement on their income.

4. The motivation to adopt the minor herein is the desire to extend their family and enjoy parenthood, the need to fill the gap of their inability to have their own biological children due to medical complications and lastly, J's urge to put into practice and use of her parenting skills which she acquired while tending to her nieces and nephews.

5. Concerning the minor subject of these adoption proceedings, he is presumed to have been born on 22<sup>nd</sup> January 2015 in Waitihaka kwa Muchina area where he was abandoned and subsequently rescued by a good Samaritan one L M who took him and reported at Muthuini Police Post. Upon her reporting, she was advised by the police to take the baby to her home till the following day when the baby was referred to Kenyatta National Hospital where she was admitted in the new born unit for protection and care.

6. Subsequently, the hospital authority reported the incident at Kenyatta Police Post vide OB No. [Particulars withheld]. The baby was later

committed to New Life Home Trust on 5<sup>th</sup> May 2015 vide Nairobi Children's Court Protection and Care case No. 92/2015 following police confirmation that there was no claimant.

7. Through its case committee sitting held on 3<sup>rd</sup> November 2015, the baby was declared free for adoption pursuant to Section 156(1) of the Children's Act and a certificate S/N [Particulars withheld] of even date issued. The child stayed in the aforesaid home till 5<sup>th</sup> November 2015 when he was placed under the continued foster care and control of the applicants herein and therefore continued to enjoy parental care. The baby has since bonded very well with the applicants.

8. While these proceedings were ongoing, the court appointed L M P as a guardian ad litem on 28<sup>th</sup> September 2017 pursuant to the Chamber Summons dated 24<sup>th</sup> July 2017 supported by an affidavit of even date deponed by the applicants, proposed guardian's consent and affidavit plus affidavit of fitness deponed on the same day by one W.

9. Prior to the hearing, KKPI adoption society, Director Children Services and the guardian ad litem filed their respective evaluation and assessment reports dated 27<sup>th</sup> September 2017, 17<sup>th</sup> November 2017 and 3<sup>rd</sup> November 2017 respectively thus recommending the adoption.

10. Following various home visits made to the applicants' home and investigations carried out to both the applicants and close relatives, the reports revealed that the applicants are staunch Christians worshipping at Christ Faith Celebration Ministries, medically fit and have no criminal record. The couple is privileged to have a combined monthly income of over Kshs.100,000/= per month. They also own agricultural land and a PSV motor vehicle for ease of movement and income generation.

11. I have considered the application herein, supporting affidavits, statement of particulars and various stakeholders' reports. There is no doubt that both applicants are Kenyan citizens aged 41 and 40 years respectively. Undoubtedly, this is a local adoption by virtue of their nationality. Regarding the suitability of their age bracket in compliance to Section 158 (1) (a) of the Children Act, both applicants are above 25 years and below 65 years old. They are therefore qualified on account of age.

12. Considering that nobody has laid claim over the baby as evidenced by police department's 1<sup>st</sup> letter dated 22<sup>nd</sup> January 2015 and final letter dated 10<sup>th</sup> February 2015 after undertaking sufficient investigations, consent is dispensed with in conformity with Section 159 of the Children's Act.

13. It is trite law that before a court makes any decision on any issue concerning a child including but not limited to adoption, the best interests of a child must be taken into account. In arriving at this finding, I am properly guided by Article 53 (2) of the Constitution which provides that:

**“A child's best interests are of paramount importance in every matter concerning the child.”**

Similar position obtains under Section 4(2) and (3) of the Children's Act and Article 3 of the United Nations Convention on the right of a child (UNCRC) which provides thus:

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

14. In the instant case, the baby was abandoned by her mother at a tender age but by God's grace and sheer luck, a good Samaritan came to his rescue. Nobody has bothered to claim the baby who has now been under the continued foster care and control of the adoptive parents since the year 2015.

15. Both applicants are financially stable with good and stable source of income, agricultural land, a PSV motor vehicle and a combined income of over 100,000/= per month. This is indeed an assurance that the child has a bright future in terms of good education, medical care, food, shelter, clothing and an opportunity to inherit property.

16. On the other hand, the child has a home and a sense of family belonging thus defining his identity. Both applicants are Christians with a clean criminal record implying that the child will receive proper parental guidance, love and care, moral, emotional, psychological and spiritual support and above all, growth in a conducive environment with proper sanitation and housing.

17. During the hearing, the child appeared jovial and relaxed. He kept playing around while occasionally jumping over the applicants an indication of the positive bonding. With all these considerations in place, this court has reached a conclusion that it is in the best interest of the minor herein to be adopted by the applicants.

18. Having made the above finding, the court is persuaded to hold and do hereby make the following orders:

**(a) That the applicants herein S M K and J W K be and are hereby allowed to adopt baby A K who shall henceforth be known as G K M.**

**(b) That the consent of the biological parents of baby A K be and is hereby dispensed with since the infant was abandoned by her biological mother.**

**(c) That her place of birth shall be Waithaka Nairobi Kenya and her date of birth 22<sup>nd</sup> January 2015.**

**(d) That the Registrar General be and is hereby directed to enter this order in the adoption register.**

**(e) That the Director Immigration be and is hereby authorized to issue the child with a Kenyan passport.**

**(f) That the guardian ad litem herein be and is hereby discharged.**

**(g) That M W K K sister to the second applicant be and is hereby appointed as legal guardian of the child should any eventuality, incapacitation or death befall the applicants.**

Order accordingly.

**DATED AND DELIVERED IN OPEN COURT THIS 11<sup>th</sup> DAY OF APRIL, 2018.**

**J.N. ONYIEGO**

**(JUDGE)**

In the presence of:

M/S OOGA.....Counsel for the applicant

MR.EDWIN.....Court Assistant