



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 109 OF 2016

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

AND

IN THE ADOPTION OF BABY A AKA N N (MINOR)

N W K)

N M K)APPLICANTS

JUDGMENT

1. On 26th August 2016, N WK and N M K hereinafter referred to as the “1st and 2nd applicants” filed an Originating Summons dated 26th day of August 2016 through the firm of Kinuthia Kahindi and Co. Advocates seeking orders particularized as hereunder:

- a. That the honourable court be pleased to appoint M J K and F W G as guardians ad litem for the Baby A aka N N.
- b. That the Director Children Services investigates the propriety of the applicants’ fitness to adopt the child A aka N N and file a report.
- c. That the applicants be authorized to adopt Baby A aka N N (infant).
- d. That upon adoption, the child be known as A W W.
- e. That the registrar of births and deaths do cause entry to be made in the adoption register with regard to this child and that the baby be considered as a Kenyan citizen.
- f. That the costs of this application be costs in the cause.

2. Application which is filed pursuant to Sections 154, 156(1), 157(1) a, 4(a), 159 (4) (6) (7) (8) a, 160, 162, 163, 164(1) and 176 of the Children’s Act No. 8 of 2001, Regulations 24, 25, 26 of the Children (adoption) Regulations 2008, Section 24 of the interpretation and general Provisions Act Cap. 2 of the Laws of Kenya and all other enabling provisions of the law, is supported by a statement in support of the application dated 13th July 2016, applicants’ affidavit in support of the application for appointment of the proposed guardians ad litem sworn by the applicants on 26th August 2016, consent of the proposed guardians ad litem filed on 17th November 2016 plus the affidavit of fitness of guardians ad litem deponed by one M J K and F W G on the 26th day of August 2016.

3. The applicants herein are Kenyan citizens living together as husband and wife having celebrated their monogamous marriage at a church wedding held at St. Stephen’s Church Jogoo road on 8th May 1993. Since then, they have been residing and cohabiting within Nairobi where they work with the 1st applicant managing and running his own [particulars withheld] known as [particulars withheld] and the 2nd applicant being a [particulars withheld] currently teaching at [particulars withheld].

4. The couple has however not been privileged to have their own biological child due to the 2nd applicant’s medical complications hence resorting to adopt the baby herein and her sister also the subject in adoption cause No. 145/16 pending before the same court. Their motivation to seek the adoption herein has been prompted by the desire to have a complete family with children; desire to experience parenthood and above all, the urge to help a needy child in society.

5. The minor herein estimated to have been born on 2nd February 2012 was abandoned together with her sister J alias J W outside the gate of Rongai Police Station the 23rd April 2014.

6. The baby together with her sister now a subject of adoption in adoption case No. 145/16 were taken to Rongai Police Station by members of the public where the abandonment report was made vide OB No. 72/25/4/2014. They were then referred to Fatuma maternity hospital where she was admitted for protection and care for a period of 9 months. On 29th January 2015, she was referred to Thomas Barnados Children's home and later a formal committal order was made by the Children's Court Nairobi on 15th May 2015 vide P & C Case No. 103/15.

7. Following enquiries and several home visits made to the applicants' home, change trust adoption society during its case committee sitting held on 28th July 2015 declared the baby free for adoption and a certificate S/No. 00019 issued to that effect. The baby was placed under the foster care and control of the applicants on 13th January 2016. She has since been under their continuous care and control for a period of not less than 3 months in compliance with Section 157 of the Children's Act.

8. During the pendency of these proceedings, M J K and

F W G were appointed as guardians ad litem on 19th January 2017 and the director children services directed to file an assessment and or evaluation report within 45 days. Prior to the hearing, the director children services, guardians ad litem and change trust adoption society filed their reports dated 8th February 2018, 10th February 2018 and 28th July 2015 respectively thus recommending the adoption.

9. I have considered the application herein, supporting statement of particulars and testimony of both applicants. Issues for determination are:

a. Is baby N N available for adoption

b. Are the applicants qualified to adopt the said baby

c. Is it in the best interest of the baby that she be adopted

10. Section 157(1) of the Children's Act has given clear guidelines as to which child is supposed to be adopted. Sub-Section 1 provides that:

“Any child who is 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 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 observed by the registered adoption society in Kenya”.

Article 14 (4) of the Constitution further provides that:

“A child found in Kenya who is, or appears to be, less than 8 years of age and whose nationality and parents are not known is presumed to be a citizen by birth.

11. The baby herein was found having been abandoned outside the gate Rongai Police Station on 23rd April 2014 and her date of birth estimated to be 2nd February 2012. The baby who was therefore about two months old when she was rescued is less than 8 years provided by Article 14 (4) of the Constitution. Her parents are unknown to date. By dint of that provision, the child is presumed to be a Kenyan citizen and has been a resident in Kenya preceding these adoption proceedings. After the child was declared free for adoption on 28th July 2015 and placed under the mandatory foster parental care and control in accordance with Section 157 of the Children's Act, the baby has since enjoyed parental love, care and guidance which was discernible and exhibited in court during the hearing of these proceedings whereby she sat closely to both parents while referring to them as dad and mom with obvious joy and excitement from the parents in reciprocity. Accordingly I am satisfied that the baby is available for adoption.

12. Have the applicants met the requisite criteria to adopt the baby herein? The applicants herein born 1964 and 1966 respectively are Kenyan citizens aged between 25 and 65 years old in compliance with Section 158(1) of the Children's Act. According to the three stakeholders reports (children department, adoption society and guardians ad litem), both applicants are staunch Christians, financially stable with a combined monthly income of over 100,000/= per month, are morally, mentally and physically fit, have no criminal record and do not practice homosexuality. By virtue of their citizenship being Kenyans, the adoption herein is qualified to be classified as local adoption. Accordingly, the applicants herein have met the necessary requirements to be able to adopt the baby herein.

13. Is the adoption in the interest of the baby? Article 53(2) of the Kenyan Constitution provides:

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

Equally, Section 4(2) (3) of the Children's Act does provide similar safeguards so is to article (3) of the African Charter on the rights and welfare of a child.

14. Consideration of the best interests of the child is crucial and a constitutional imperative with international instruments such as Article 4 of UN convention on the right of a child upholding same principle. In this case the baby was abandoned and left deliberately stranded in front of a police station. According to police investigations as exhibited from their 1st letter dated 23rd April 2014 and 17th July 2015, the baby's parents and or relatives cannot be traced. Nobody has laid claim over the baby. To that extent consent is dispensed with in accordance with Section 159(1) of the Children's Act.

15. Assessment and evaluation of the applicants by various stakeholders confirmed that they are socially fit, owns property as evidenced from their bank statements and title deeds copies of which were attached and above all stays in their own 4 bedroomed house in a middle class estate at [particulars withheld] within Nairobi. With this background, the baby is assured of the basic necessities like food, shelter, clothing, education, medical care and above all inheritance all of which are crucial in development and growth of the baby.

16. Socially and morally, both adoptive parents are Christians, medically and physically fit with no criminal record. Like any other child in society, the baby needs spiritual nourishment and proper upbringing morally and socially. It is from this combined background that I am persuaded to believe that it is in the best interests of the baby that the child needs proper parental love, care and guidance, a home with family attachment and identity. With a four bedroomed house in [particulars withheld], the baby is assured of a good and conducive environment for his growth plus morally upright parents engaged in a stable marriage (see re ARE (a child) (2008) IKLR (G & F) 609.)

17. Having held as above, this court is persuaded and indeed convinced that the application for adoption herein is merited and the same is geared towards realizing the best interests of the baby the subject of these proceedings and therefore allowed with orders as follows:

- a. That the applicants herein be and are hereby authorized to adopt baby N N henceforth to be known as A W W.**
- b. That the biological parents having abandoned the baby, their consent be and is hereby dispensed with.**
- c. That her date of birth shall be presumed to be 20th November 2010 and place of birth Rongai Kenya.**
- d. That the Registrar General do enter this adoption order in the adoption register of the adopted children.**
- e. That the Director Immigration do issue the baby with Kenyan passport.**
- f. That the guardians ad litem herein be and are hereby discharged.**
- g. That M J K and F W G relatives to the applicants be and are hereby appointed as the legal guardians in the event of death or incapacitation of the applicants.**

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 17th DAY OF MAY, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

N/A for.....Counsel for the applicants

Edwin.....Court Assistant