



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
ADOPTION CAUSE NO. 202 OF 2010
IN THE MATTER OF THE CHILDREN ACT 2001
AND IN THE MATTER OF BABY R M
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY
D M O
W F M.....APPLICANTS

J U D G M E N T

The Application

1. The Court has before it an application seeking an Order authorising the Applicants to adopt the child the subject of these proceedings. The Applicants are a married couple. They were marriage pursuant to customary law in 1987 and on 23rd October 1992 their marriage was formalised. The Application is brought by an Originating Summons is dated 20th November 2010 and filed on 17th December 2010. The Application seeks the following prayers:

1. **THAT** A K be appointed as GUARDIAN AD LITEM of the minor BABY R M
2. **THAT** the Director of Children's services do evaluate the applicants and file a report
3. **THAT** THE CONSENT OF THE PARENTS BE DISPENSED WITH AS THE CHILD WAS ABANDONED SHORTLY AFTER BIRTH
4. **THAT** the Applicants be authorized to legally adopt **Baby R M** who will be known as Z R K M

2. The Application is supported by the Applicants Statement and Affidavit in Support. As the Affidavit and the Application generally demonstrated that the evidence filed was incomplete. When the matter eventually came before the Court for Hearing on 2nd February 2017 Counsel realised that there was no Chambers Summons but only an originating summons on the file. Counsel then filed a Chambers Summons which the Court accepted as duly filed and properly before the Court. In addition, the adopting parents had not informed the Child that she was not their natural child. The Hearing then proceeded without the Mother and Child's presence to allow them time to inform her in an appropriate and sensitive manner. The Court also gave leave to the applicants to file a further affidavit to bring the case up to date. That was filed on 16 August 2017.

3. The Chamber Summons filed on 2nd February 2017 seeks different orders namely:

1. **THAT** this Honourable Court be pleased to appoint J W G as GUARDIAN AD LITEM FOR THE minor BABY R M
2. **THAT** this Honourable Court be pleased to direct the Director of Children's services to evaluate the applicant and file a report.
3. **THAT** the costs of this application be on course.

4. On 2 February 2017 the Court Ordered that:

1. Dr J W G be and is hereby appointed Guardian ad Litem for Baby R M
2. Peter Ndotono to file an updated report from Kenya Children's Homes Adoption Society setting out the up to date position
3. The Director of Children Services to evaluate the Applicants and file a Report
4. The Applicants be and are hereby granted leave to file and serve a Supplemental Affidavit setting out all the facts and matters and exhibiting all documents they wish to bring to the Courts attention at the Final Hearing.

5. Therefore when the Application came before the Court for Hearing on 1st February 2018 (one year later) the Court had before it The Applicants Affidavit and Supplemental Affidavit, the Report from Kenya Children's Homes as well as their updating report together with the Reports of the the Director of Children's Services and the Guardian ad Litem. From the Reports and Statements together with Exhibits the Court can garner the history and salient facts of this Case.

6. The Applicants are a professional couple. The First Applicant is a doctor at [particulars withheld] medical services. The Second Applicant is a civil servant working as a [particulars withheld] Officer in Nairobi. While they are at work the Child is taken care of by their household employee. They are aged 59 and 56 respectively. The Applicants live in a Four bedroom property in Parkside Villas South B. Their house is mortgaged. They also own property in Vihiga and Kitengela. The Applicants also have three biological children who have attained majority and have either completed or are undertaking tertiary education. The Child was placed with them on 8th March 2008 and has remained in their care since. The Applicants were declared fit to adopt by a decision of the Case Committee sitting on 24th October 2008. The Supplemental Affidavit exhibits the Applicant's identity cards, certificates of good conduct and income details.

7. The Child is estimated to have been born on 12th February 2006. She was found abandoned on 13 February 2006 at Kirinyaga Construction near the North Airport Road. The Matter was reported to the Police at Embakasi and was given an Occurrence Book No 24/13/2/2006. The Child was taken to Thomas Barnado's Home as a place of safety. She was formerly committed to the Home on 25th July 2007 pursuant to a Care and Protection Order made within Care and Protection Case No 112 of 2007 in Nairobi. The Police have not been able to trace the biological parents of the Child and no-one has come forward to claim her. The Final Police Letter is dated 23rd October 2007 and confirms their lack of success. The Child was declared free for Adoption by Kenya Children's Homes on 14th November 2007 by Certificate Serial number 588. The Certificate on file is a replacement copy. The Applicants' extended family are aware of the adoption and it is supported by their biological children.

8. The Child is a class five pupil at Loreto Convent Valley Road. It is said she suffers from Dyslexia and the applicants are in the position to control it with the assistance of the teachers. The Child is reported to be health and happy and well cared for. The Applicant's understand and accept that if she is adopted by them she will have the same rights of inheritance as their biological children.

9. The Kenya Children's Home Adoption Society recommends that the Applicants be permitted to adopt the Child. That is also the recommendation of the Report of the Director of Children's Services (Report filed 9th November 2017) and the Guardian ad Litem who filed his report on 31st January 2018. The Guardian ad Litem also places on record the couple's motivation for adoption being that they wish to help a need child which is in keeping with their strong Christian beliefs.

10. Its transpired that the Child was baptised at Loreto Convent Valley Road. She was then given the name R. In the circumstances, it is unclear whether the Child is intended to be known as Z R or R. Without that clarification a final adoption order cannot be made.

11. Neither the Chambers Summons nor the Originating Summons sets out who will be the Child's legal guardian if the parents are unable to care for her for whatever reason. Without that detail the Court cannot make a final order.

12. In the circumstances, the final decision is deferred to allow the Applicants to provide that information. The Court feels that such a course of action is in the Child's best interests rather than dismissing the Application.

Order accordingly,

FARAH S. M. AMIN

JUDGE

Dated 4th April 2018

Dated, Signed and Delivered in Nairobi, this 18th day of June 2018

In the presence of

Court Clerk: Wangeci

Applicants: Read in Open Court - No Appearances