



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 75 OF 2017 (O.S)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF J N A

BY

Z O O AND C A M (APPLICANTS)

JUDGMENT

1. The Applicants Z O O and C A M are in a monogamous marriage under customary law since 1st November, 2006. They had one child of their own before the placement of the minor with them. They wish to adopt the female child known as J N A, through the Originating Summons dated 22nd May, 2017.
2. From the pleadings, the court gathers that the 1st Applicant, Z O O is a Doctor at [Particulars Withheld] Hospital in Ireland while the 2nd Applicant C A M is a Nurse at [Particulars Withheld] Hospital. They reside in Ireland and are both Christians.
3. Records indicate that the parents of the minor in this matter are relatives of the 2nd Applicant. The biological mother and the prospective adoptive mother are sisters. The biological parents of the minor have no stable income and are unable to provide for their four children.
4. Prior to the hearing of the adoption application, Change Trust Adoption Society prepared and filed a report in court. They also issued a certificate No. [particulars withheld] dated 14th November, 2015 declaring the child free for adoption. The guardian ad litem B O filed a report which was favourable and recommended the adoption of the child by the Applicants.
5. An officer from the office of the Director of Children Services conducted home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child. He filed a report dated 26th September, 2017 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants who are better able to provide for her. The applicants appear to be a warm family.
6. The child was in court during the hearing and appeared to have a bond with the two Applicants. She was jovial and clearly seemed to trust the Applicants. The Applicants' family members are aware of the proposed adoption and support it.
7. The orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

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

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof amplifies this principle.

8. The Applicants have dual citizenship - Kenya/ Ireland. From the report by the Director of Children services, the indefinite moratorium issued by the Kenyan cabinet on 27th November, 2014 involved inter-country and resident adoptions of Kenyan children by foreigners. It does not affect adoptions by Kenya applicants, even those living abroad. Dual citizenship in our country is anchored in **Article 16** of the **Kenyan Constitution**.
9. According to the **Guidelines for Alternative Family Care of Children in Kenya page 153**, “kinship adoption is adoption by adopters who are kin or relatives within the extended family of the child.” Kenyans living abroad and wishing to adopt a Kenyan child will adopt as Kenyans by way of domestic adoptions. This is therefore considered to be a local adoption.

10. I have perused the entire record and find that the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought.

11. From the foregoing, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 18th May, 2017 and order as follows:

- i.** The Applicants, Z O O and C A M are hereby allowed to adopt **J N A** who shall henceforth be known as **J N A**.
- ii.** Her date of birth shall be 1st June, 2006. She was born in Kenya and the place of birth shall be Kawangware in Nairobi.
- iii.** J A M is hereby appointed legal guardian of the child in the event that the Applicants die or are incapacitated by ill-health.
- iv.** The Registrar General is directed to enter this order in the Adoption Register.
- v.** The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi.** The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 22nd day of November, 2018.

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L. A ACHODE

JUDGE