



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 88 OF 2016 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY C T
BY
K O W AND M A O (APPLICANTS)

JUDGMENT

1. The Applicants K O W and M A O are in a monogamous marriage which was solemnized at ACK St. Bartholomew Nyari Nairobi on 12th December, 2009. They have no child of their own. They wish to adopt the child known as Baby C T minor of male sex, through the Originating Summons dated 23rd June January, 2016. From the pleadings the court gathers that K O' W works at the [particulars withheld] , while M A O is a Community Health Worker with [particulars withheld]. They reside in Nairobi and are both Christians.
2. Records indicate that the child in this matter was found having been abandoned at infancy, at the Kenyatta National Hospital near the stores on 22nd October, 2014. He was rescued by a security officer from the Hospital and taken to the Admission area, where he was admitted at the Hospital. The matter was reported at the Kenyatta Police Post and was booked via OB No. 16/22/10/14 the same day.
3. The child was committed into the legal custody of New Life Home Trust by the Westlands Sub-County Children's office on 8th May 2015. On 10th February 2015 the child was released from Kenyatta Hospital and admitted into the same Home for care and protection. On 8th May 2015 the child was officially committed to the same home by the Senior Resident Magistrate Children's court, Nairobi vide Protection and Care Case No. 91/15.
4. A letter dated 31st July, 2015 by Kenyatta Police Post confirmed that the biological parents of the child were not traced, nor did anyone come forward to claim the child. The child was declared free for adoption on 11th August, 2015 by the Change Trust Adoption Society vide certificate No. [particulars withheld]. He was released into the custody of the Applicants for mandatory foster care pending adoption on 10th September, 2015, upon their signing a Foster Care Agreement dated the same day. Since then he has been in the continuous custody and care of the Applicants.
5. Prior to the hearing of the adoption application, Little Angels Network an adoption society, prepared and filed a report in court. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child.

6. The Director of Children’s Services also filed a report dated 27th October, 2016 recommending the adoption for reasons that the child stands to gain parents. Further that he has flourished under the care of the prospective adoptive parents with whom he has bonded. The guardian ad litem, C W K also filed a report that was favourable and recommended the adoption of the child by the Applicants.

7. It is important to note that, 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.

8. The court observes that this is a local adoption and the Applicants, in the opinion of the court have fulfilled the requirements for local adoption under the Children Act, 2001. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. The child was in court during the hearing and appeared to have bonded well with the Applicants. He was jovial and related well with the Applicants. The child was observed to be in good health and in good spirits and had flourished under the care of the Applicants.

9. Secondly, the Applicants meet the social and financial 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.

10. 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, the court allows the prayers sought in the Originating Summons dated 23rd June, 2016 and order as follows:

- i. The Applicants, K O’ W and M A O are hereby allowed to adopt **Baby C T** who shall henceforth be known as **C B W**.
- ii. His date of birth shall be presumed to be 22nd October, 2014. He is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be Nairobi.
- iii. D O and J O (brother and sister-in-law to the 2nd Applicant) are hereby appointed legal guardians 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 23rd **day** of February 2017.

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L. A. ACHODE

JUDGE