



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 93 OF 2016 (OS)

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

IN THE MATTER OF ADOPTION OF BABY P

BY

A G O AND S S O (APPLICANTS)

JUDGMENT

1. The Applicants A G O and S S O are in a monogamous marriage which was solemnized at Sorrento, Hancock, State of Maine, USA, on 12th August, 2006. They have one child of their own, B B O, aged 7 months and another child, J M O, aged four years old who was previously adopted. They wish to adopt the child known as Baby P a minor of male sex, through the Originating Summons dated 31st May, 2016. They indicate that A G O is a Missionary, Director with [particulars withheld] while St S O is a Physician and Lecturer, [particulars withheld]. They reside at Hurlingham, Nairobi and they both profess Christian faith.
2. The child in this matter, according to records, is said to have been abandoned at Mwanza area, in Eldoret on 8th December, 2014. The matter was reported at Eldoret Police Post on the same date and was recorded vide OB No. 30/08/12/2014.
3. The child was admitted to Kenya Christian's Home on 19th December 2014 for care and protection. On 18th December 2014 the child was officially committed to the same home by the Eldoret Children court, vide P&C Case No. 68 of 2014. A letter dated 10th June, 2015 from Eldoret Police Station confirmed that the biological parents of the child have not been traced and neither has anyone come forward to claim the child.
4. The child was declared free for adoption on 28th July, 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, Kenya Children's Home 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 has, in a report dated 29th November, 2016 recommended the

adoption for reasons that the child stands to gain the opportunities provided by becoming the son of the Applicants. That if the adoption is granted the child will grow up in a loving home rather than in an institution.

7. The guardian ad litem, Mr. S O O also filed a report that was favourable and recommended the adoption of the child by the Applicants. He observed that the child appeared happy, healthy, friendly and quite at home with the Applicants and his elder brother. That the child exhibited a sense of attachment and mutual bonding, which was a sign of integration and continuous loving by the Applicants.

8. 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 appeared clean, well fed and well-adjusted to his new parents. The court also notes that the child stands to gain siblings if the adoption order is granted.

9. Of paramount importance in this application is the best interests of a child since, the orders sought by the Applicants relate to a child. **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.

10. This is a local adoption where the Applicants in my opinion fulfil 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. Secondly, they 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 to by the adoption order sought.

11. From the foregoing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Reasons wherefore, the prayers sought in the Originating Summons dated 31st May, 2016 are allowed with orders as follows:

- i. The Applicants, A G O and S O are hereby allowed to adopt **Baby P** who shall henceforth be known as **P E O**.
- ii. His date of birth shall be presumed to be 10th September, 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 Eldoret.
- iii. D O K (brother to the 1st Applicant) 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 23rd day of **February 2017**.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicants