



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 213 OF 2015 (OS)

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

AND

IN THEMATTER OF ADOPTION OF BABY R M (CHILD)

G N.....1ST APPLICANT

C W.....2ND APPLICANT

JUDGMENT

1. The applicants GN herein referred to as the 1st applicant and CW herein referred to as the second applicant are husband and wife respectively having celebrated their monogamous marriage at the Registrar of Marriages Nairobi office on 13/10/2009 and thereafter had the same blessed at [particulars withheld] PCEA Church on 25/12/2010. The applicants who initially got married under Kikuyu Customary Law in the year 1988 were not blessed with children hence their desire to adopt a child in this case RM the subject of these proceedings.

2. Through their application brought by way of Originating Summons dated 15/5/2015 but filed in court on 4/9/2015, the applicants jointly prayed for the following orders:

1. That GN and CW be authorized to adopt the child RM.
2. That the consent of their biological parents be dispensed with as the child was abandoned.
3. That upon making of the adoption order, the child be known as JNN.
4. That the Registrar General to make the appropriate entry of JRNN in the adopted children's register.
5. That the child JRNN be presumed to be a Kenyan citizen born in Kenya on 8/5/2008 and that the Director of Immigration Services to issue the child JRNN with a Kenya Passport.
6. That GEMJ be appointed legal guardian of the child JRNN.

3. The child referred to in these proceedings was born at Machakos General Hospital around 8th May, 2008 by JNK who later abandoned her and disappeared. Faced with the abandonment challenge, the hospital through their letter dated 8/7/2008 wrote to the Children Officer Machakos informing them of the child's status and therefore requested for the child to be relocated to a children's home.

4. Upon receiving the said report from the hospital, children department made a report at Machakos Police Station vide OB number [Particulars Withheld]. Thereafter, the office (Children Office) moved to Machakos Children's Court and had the child committed to Mama Ngina Children's Home on 9/7/2008 vide P and Case No. 16/15 for temporary care and protection pending formal adoption process.

5. After conducting investigation, police were unable to trace the parent nor relatives to the child. Consequently, the OCS Machakos Police Station through his second letter dated 15/2/2010 wrote to the Welfare Society of Kenya confirming that position.

6. On 22/4/2010, the applicants who had shown interest in adopting the child signed an agreement of foster parent with the Child Welfare Society of Kenya on placement of the child for foster care, custody and guardianship after rescue. Upon executing the said agreement, the applicants were given custody of the child for the mandatory three months foster care, protection and control as required under Section 157 (1) of the Children's Act. Since the time the applicants took custody of the child, the child has been under their care, protection and control to date.

7. On 17/5/2011, child Welfare Society of Kenya declared the child free for adoption vide its certificate No. [Particulars Withheld]. On 29/6/2016 one DWK was appointed guardian ad litem having been recommended and declared fit by one G W W.

8. Prior to the hearing of the adoption, Child Welfare Society of Kenya filed their report dated 17/5/2012 in which they recommended the applicants and approved the application. Equally the Director Children Services compiled and presented their report dated 4/11/2016 recommending the applicants. The guardian ad litem DWK, filed her report dated 3/2/2017 confirming that she had made several visits to the home of the applicants and assured the court that the child had fully bonded with the adoptive family and that the applicants were suitable to adopt baby R. In a nut shell, all reports legally required in law are favourable.

9. I have carefully considered the application herein for adoption, evaluated the facts of evidence herein and listened to various participants legally mandated in this case, the applicants, children department, guardian ad litem and the Child Welfare Society of Kenya and undoubtedly I am convinced that the applicants have met all the requirements as per the applicable laws.

10. According to the report of the children department and Child Welfare Society as well as the guardian ad litem, the child has fully bonded with the applicants. The applicants are persons of means, religious and people of integrity. In any family set up, these are very crucial virtues and or attributes that any growing child would require exposure to. Both applicants are well within the requisite age bracket for purposes of adoption with the 1st applicant aged 56 years and second applicant 53 years.

11. The applicants attached their title deeds registered in the 2nd applicant's name and payslips. The applicants are engaged in salaried employment each earning an average of between 30,000 to 35,000. By all means, this is family that is financially stable with guaranteed property for inheritance. The child is in school and both parents are Christians hence a morally and spiritually conducive and desirable environment for the proper upbringing of the child.

12. By the time this application was filed on 15/5/2015, the child was aged about six years implying that she was way above the minimum period of six weeks recommended under Section 156 (1) of the Children Act which reads:

“No arrangement shall be commenced for adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf”.

The child herein is within the legally required age bracket for adoption.

13. As regards the age of parents, the adoptive father is 56 years and the mother 53 years. That is also within the minimum age of 25 years and maximum of 65 years a requirement under Section 158 (1) (a) of the Children's Act.

14. When considering an application of this nature, a court is guided by the paramount principle of the best interest of a child. Is it in the best interest of baby RM to allow this application?

Section 4 (2) of the Children's Act provides guidance as follows:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of a child shall be a primary consideration”.

This position is fortified by Article 53 (2) of Kenyan Constitution 2010 which is the bedrock of all proceedings affecting Children. Sub-article 2 provides:

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

Justice Odero clearly and correctly captured and upheld the above stated principle in the **Adoption Cause No. 29/2014 Nairobi in the Adoption of Baby I.B. (2014) eKLR.**

15. Every effort to trace the minor's parents and or relatives having failed as per the police officer's second letter dated 15/2/2010, consent is not practically possible taking into account all circumstances of the case hence the same is dispensed with.

16. While in court during the hearing of these proceedings, the child appeared jovial and in good health. She was holding the 2nd applicant closely an indicator of positive bonding. For all purposes and intent, the applicants herein have convinced this court that they are suitable and responsible parents who will discharge full parental responsibility in the best interest of the child. Accordingly, application herein is allowed with orders as follows:-

1. The applicants herein GN and CW are hereby allowed to adopt Baby RM who shall henceforth be known as JRNN.
2. Her date of birth shall be 8th day of May, 2008.
3. That GEMJ a brother to the 1st applicant GN is hereby appointed as a legal guardian of the child in the event that the applicants die or are incapacitated by ill health.
4. That the Registrar General is directed to enter this order in the adoption register.
5. That the child JRNN be and is hereby presumed to be a Kenyan Citizen born in Machakos Kenya on 8/5/2008 and that Director of Immigration Services do issue the child JRNN with a Kenyan Passport.
6. That the guardian ad litem be and is hereby discharged.

Order accordingly.

SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF FEBRUARY, 2017.

J. N. ONYIEGO (JUDGE)

In the presence of Mutindi Advocate holding brief for Mrs. Mwangi

Advocate for the applicant