



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 101 OF 2016
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

AND

IN THE ADOPTION OF BABY M S (CHILD)

O C M)

K N K)..... APPLICANTS

JUDGMENT

Background

1. By way of Originating Summons application dated 18th January, 2016, the Applicants seek to be allowed to adopt Baby M S, and upon such adoption the child shall be known as M J W C. Application herein is supported by an affidavit jointly sworn by the applicants on 18th July, 2016.
2. The Applicants are Kenyan citizens and have been married since 2006, albeit customarily but they subsequently formalized their union on 15th February, 2012 at the Registrar of Marriages office. This is evidenced by their attached marriage certificate that bears serial number [Particulars Withheld] .
3. The male applicant is a Finance and Administrative Manager at [Particulars Withheld] . while the female applicant indicates that she is a Primary School teacher at [Particulars Withheld] . The couple has been blessed with one biological child, P W C, born on 26th May, 2008 and due to complications suffered by the female applicant following that birth, the couple is not able to have more biological children.
4. The child subject to these adoption proceedings is presumed to have been born on 29th June, 2012 at [Particulars Withheld] area in Kibera and abandoned immediately after birth by the mother. A Good Samaritan who found her made a report on the same day at Kilimani Police Station and the matter was recorded under OB No.[Particulars Withheld]. The police station then referred Baby M to New Life Home Trust on 2/7/2012 where she was admitted for care and protection while awaiting court committal.
5. On 12th October, 2012, the Senior Resident Magistrate's court at Nairobi committed Baby M into the legal custody of the said home (New Life Home Trust) vide Protection and Care case No.441/2012.
6. From the police records, no one has either come forward claiming the minor or seeking her whereabouts as confirmed by the police final letter dated 22nd March, 2013.
7. The child was placed in the Applicants' custody for mandatory foster care and bonding prior to

adoption on 25th April, 2013. She had been declared free for adoption by the Little Angels Network Adoption Society as reflected in the certificate with Serial No. [Particulars Withheld] dated 24th April, 2013 pursuant to Section 156 (1) of the Children's Act.

8. The Little Angels Network Adoption Society, the guardian ad litem and the Director of Children's Services all made favourable reports and filed them in

court. They also made home visits to the Applicants and were satisfied that the Applicants are well suited to cater for the minor's needs. They all recommend the proposed adoption and concur it would be in the best interest of the child.

Findings of the Court

9. Having gone through the evidence availed to this court, it is my opinion that the applicants have met the legal requirements for adoptive parents. Applicants are aged above 25 years and are below 65 years as required in Section 158(1) (a) of the Children Act. Both parents being Kenyan citizens, the adoption herein is qualified as a local adoption proceedings.

10. Considering the biological parents and relatives of the minor child have not come forward to claim their child, their consent to this proposed adoption is dispensed with in compliance with Section 159 of the Children's Act.

11. From the court's assessment, the child seems to have bonded well with her adoptive parents as demonstrated in court when the Applicants came with her and the court therefore confirms the reports of the guardian ad litem, adoption society and the Director of Children Services.

12. The court stands guided by the local and international legal instruments that have been put in place to look into the welfare and rights of the child. The Constitution of Kenya, being the grundnorm, provides under Article 53(2) that:-

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

The same is echoed by the Children's Act under Section 4 (3).

13. Article 2 (5) and (6) of the Constitution provides for the adoption of international general rules and treaties/conventions that have been ratified by the state to form part of Kenyan Law International instruments that seek to support and champion the rights of the child. For instance the United Nations Convention on the Rights of the child (hereinafter referred to as CRC) and the African Charter on the Rights and Welfare of the child (hereinafter referred to as ACRWC) have made clear provisions stressing the principle of the best interests of the child and its consideration being of utmost importance. It is in this context that this court relies on the aforementioned instruments to further illuminate on the best outcome for the child.

14. The CRC echoes the best interests of the child principle under Article 3 by stating that:

“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 the child shall be a primary consideration”.

The ACRWC also bears the same message under Article 4.

15. From these provisions, it is clear that what is strongly advocated for is what is the best outcome for the child. **Kimaru L. J. in M.A. vs R.O.O. (2013)eKLR stated:**

“...there are certain minimum requirements that have universally been accepted to constitute the best interests of the child. This includes the right of a child to be provided with shelter,

food, clothing and education. The child is entitled to medical care. The child's welfare should be taken care of under the best possible circumstances. The child is also entitled to parental guidance (...) and to be given a suitable, conducive and loving environment in which to grow up...".

16. With reference to the above excerpt to which I strongly concur with, it is my guided view that it covers essentially what a child ought to be entitled to.

17. Taking into account that Baby M was abandoned, giving her a family and a stable environment is likely to enhance her positive growth and development. A family is the fundamental unit of a society and among many other things that it can offer an individual, a sense of belonging.

18. The UNCRC under Article 20 and 21 strongly advocates for special protection to be accorded to a child who has been temporarily or permanently been deprived of a family environment and it urges state parties to ensure alternative care of such a child.

19. The ACRWC, on the other hand, under Article 18 lays down the importance of a family and the state parties are urged to ensure it is protected and supported. Our constitution also makes the same clear under Article 45 (1) for it is in this unit that a child is able to enjoy parental care and protection and it aids in the child's development, emotionally and physically.

20. Based on the above provisions, and further relying on Section 163(1) of the Children's Act, I find that adoption is in the best interest for the minor child M. It would provide her with all she needs for her development rather than living in an institution.

21. I therefore hereby allow the application dated 18th July, 2016 and make the following orders:-

1. That the Applicants, P C M and K N K are hereby allowed to adopt Baby M S who shall henceforth be known as M J W.
2. That her place of birth shall be Kibera, Kenya and date of birth 29th June, 2012.
3. That D N and W W (sister and brother in law to the female applicant) are hereby appointed legal guardians of the child in the event a misfortune befalls the Applicants rendering them incapable of taking care of the child.
4. That the Registrar General be and is hereby directed to enter this order in the Adoption Register.
5. That Director of Immigration is hereby authorized to issue the child with a Kenyan Passport.
6. That the guardian ad litem be and is hereby discharged.

It is so ordered.

DATED AND DELIVERED IN OPEN COURT THIS 30TH DAY OF MARCH, 2017.

J.N. ONYIEGO

(JUDGE)

In the presence of

Counsel for the applicants/petitioners