



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 28 OF 2016
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

AND

IN THE ADOPTION OF BABY A (CHILD)

K R P

C L K P.....APPLICANTS

JUDGMENT

1. Through an Originating Summons application dated 2nd February, 2016, the Applicants seek to be allowed to adopt Baby A by this court. The applicants are a married couple of Kenyan (male applicant) and Canadian (female applicant) citizenship. Their union was solemnized on 4th May, 2003, at Lord Erroll Restaurant as evidenced by their marriage certificate with serial number [Particulars withheld], The male applicant indicates that he is a businessman, being a director at [Particulars withheld] Limited while the female applicant is the Chief Executive Officer at [Particulars withheld] cum housewife.
2. The Applicants' marriage has been blessed with one biological child, M K Pl aged 9 years and an adopted female child, TJ K P aged 7 years. They wish to adopt Baby A to further grow their family and provide him with an opportunity to grow up in a family rather than an institution.
3. The subject child was born on 18th September, 2013 and was abandoned three months later on 8th December, 2013 at [Particulars Village, Gathanga Location in Kiambu. He was rescued by a Good Samaritan who rushed him to Gathanga Health Centre before filing a report of the same at Karuri Police Station.
4. The report of abandonment at the Karuri Police Station was recorded under OB No. [Particulars withheld]. The matter was also referred to Kiambu County Children's office from where the child was placed under the care and protection of [Particulars withheld] Home.
5. In accordance with Section 119 of the Children Act, Baby A was committed by the Senior Principal Magistrate's court in Kiambu to the custody of the mentioned home on 3rd February, 2015 under Protection and Care case number 13 of 2015.
6. Baby A was declared free for adoption on 7th March, 2015 and a declaration certificate bearing serial number [Particulars withheld] issued to that effect and as required by the Children Act under Section 156(1) which provides:

“No arrangement shall be commenced for the 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 on that behalf.....”.

7. Following the signing of a care agreement between the Applicants and Jean Petty Legacy Home, the minor was placed in the Applicants’ care for mandatory foster care on 25th May, 2015 and he has been in their custody ever since.

8. On 9th May, 2016, the court through an order dated the same day approved the appointment of G M as guardian ad litem in this matter and further directed for the Director of Children Services and the guardian ad litem to assess, prepare and file reports with respect to the proposed adoption.

9. The reports were prepared by the relevant parties then submitted to court. The Change Trust Adoption Society’s report indicates their case committee approved the adoption on 9th May, 2015, the guardian ad litem’s report dated 24th August, 2016 was favourable to the adoption and the Director of Children Services report dated 12th January, 2017 also had a positive proposal for the adoption.

10. The home visit made by the mentioned stakeholders were all convincing on the Applicants’ suitability and capability of providing for Baby A physically, emotionally and financially.

11. From his abandonment, no one has come up claiming the minor and this is evidenced by the letter from Karuri Police Station dated 2nd May, 2015. Taking into consideration and in line with Section 159(1) of the Children Act, the requirement for consent from either parent is thus dispensed with.

12. The court has taken note of the fact that the 2nd applicant is a Canadian citizen but married to a Kenyan citizen (1st applicant). They have been married since 2003 and both stay in Kenya. L K the 2nd applicant is a resident of Kenya so is to her father who is staying in [particulars withheld].

The Director of Children’s report dated 12/1/2017 has recommended the same. Although L is a Canadian citizen, her husband is a Kenyan by birth and being a Kenyan resident, the adoption herein is qualified to be classified as a local one.

13. The legal requirements pertaining to age have been met by the proposed adoptive parents as both are above 25 years and are not over 65 years if age.

14. Basing this judgment on thorough perusal of the documents presented before me and the observations made by this court when the Applicants came with the child to court, it is in the court’s view that having the adoption approved for the Applicants will be in the Baby A’s best interests in line with Article 53(2) of the Constitution and Section 4 (3) of the Children Act which echoes the same message of the child’s best interests to be of paramount importance.

15. Being provided with a stable home and family will accord Baby A with an identity, sense of belonging and a stable environment which will be good for his growth and development.

16. It is this court’s position therefore that the application dated 2nd February, 2016 be allowed as prayed and the following orders are made:

1. That the Applicants be and are hereby allowed to adopt Baby A who shall henceforth be known as A W K P.
2. That the child shall be presumed to be a Kenyan citizen by birth.
3. That his date of birth shall be 18/9/2013 and place of birth Kiambu, Kenya.
4. That the Registrar General be and is hereby directed to enter this order in the Adoption Register.

5. That the legal guardians, are hereby appointed as such in case of any misfortune befalling the Applicants before the child reaching the age of majority.

6. That the guardian ad litem be and is hereby discharged.

It is so ordered.

DATED AND DELIVERED IN OPEN COURT THIS 24TH DAY OF MARCH, 2017.

J.N. ONYIEGO

(JUDGE)