



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 87 OF 2016 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY C J

BY

J K A AND H A N (APPLICANTS)

JUDGMENT

1. The Applicants J K A and H A N are in a monogamous marriage which was solemnized at [particulars withheld] Church Milimani, Kisumu on 30th December, 2006 vide certificate No. [particulars withheld]. They have no child of their own. They wish to adopt the child known as Baby C J a minor of female sex, through the Originating Summons dated 27th June 2016. From the pleadings the court gathers that J K A works at the [particulars withheld] as an IT Manager, while H A N is a Social Worker at the [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, in Kabete. She was rescued by a Good Samaritan, one Ms Christine Litswa who took her to Kabete Police Station and the matter was booked via OB No. [particulars withheld] the same day.
3. The child was on 14th March, 2015 was admitted to Nest Children Home for care and protection. On 14th March, 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. [particulars withheld].
4. A letter dated 28th September, 2015 by Kabete Police Station 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 14th November, 2015 by the Change Trust Adoption Society vide certificate No. [particulars withheld]. She was released into the custody of the Applicants for mandatory foster care pending adoption on 24th October, 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 to Kenya Peace Initiative 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 12th January, 2017 recommending the adoption for reasons that the child stands to gain the perfect alternative family. Further that she has

flourished under the care of the prospective adoptive parents with whom he has bonded. The guardian ad litem, H N 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 and her sibling. She was jovial and related well with the Applicants and her sibling in adoption No. 86 of 2016. 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, J K A and H A N are hereby allowed to adopt **Baby C J** who shall henceforth be known as **H I K**.
- ii. Her date of birth shall be presumed to be 12th March, 2015. She is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be Kabete.
- iii. E N G (a family friend) is hereby appointed as the 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 **27th day of April 2017**.

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L. A. ACHODE

JUDGE