



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ADOPTION CAUSE NO. 86 OF 2016 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY M O
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 M O a minor of male sex, through the Originating Summons dated 27th June 2016. From the pleadings the court gathers that J K A works at the [particulars withheld] Technology as an IT Manager, while H A N is a Social Worker at the [particulars withheld] Headquarters. They reside in Nairobi and are both Christians.

2. Records indicate that the child in this matter was born on 28th February, 2015 at Tigoni District Hospital to one F A who is a minor. The child was given up for adoption by the grandmother one M A A, for reasons that the child's mother is a minor hence she will not be able to take care of the child. That the child's mother was also a victim of sexual violence by her step-father, and therefore the subject is a taboo child having been born from incest and sexual assault. The mother signed a consent for adoption affidavit on 7th April, 2015 at the Nairobi High Court, six weeks after the birth of the child as required under **section 159(8)(a)(b)** of the **Children Act 2001**.

3. The child was handed over and admitted at the Nest Children's home on 3rd March, 2015 for care and protection. On 20th April, 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. 95/15.

4. The child was declared free for adoption on 29th April, 2015 by the Kenya for Kenya Peace Initiative Adoption Society vide certificate No. [particulars withheld]. He 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 he 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 his sibling. He was jovial and related well with the Applicants. 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 27th June, 2016 and order as follows:

- i. The Applicants, J K A and H A N are hereby allowed to adopt **Baby M A** who shall henceforth be known as **K N K**.
- ii. His date of birth is 28th February, 2015. He was born in Kenya and the place of birth is Kiambu.
- 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