



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 159 OF 2016 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY I W
BY
A W C AND S N I (APPLICANTS)

JUDGMENT

1. The Applicants A W C and S N I are in a monogamous marriage which was solemnized at the Registrar's office in Nairobi on 16th August, 2016. They have another child W W a biological daughter to the female Applicant.
2. They wish to adopt the child known as I W a minor of female sex, through the Originating Summons dated 7th December, 2016. They indicate that they are both full time and part-time teachers respectively at the [particulars withheld] They reside in [particulars withheld] and are both Christians.
3. Records indicate that the child in this matter was born on 15th March 2013 to S N I, the second Applicant herein. S N states that the father of her children deserted her and has never been in their lives since the birth of the minors. That the child and her sibling in Adoption [particulars withheld] have been under her sole custody until when she got married to the first Applicant, who immediately assumed full paternal responsibility over the two children.
4. The child was declared free for adoption on 8th December, 2016 by the Change Trust Adoption Society vide certificate [particulars withheld] The second Applicant signed a consent to give up the child for adoption on 7th November, 2016.
5. Prior to the hearing of the adoption application, Change Trust Adoption Society, 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 1st February, 2017 and observed that the adoption involves a close family relationship where the 2nd Applicant is the biological mother of the child. That there is no doubt that the child has bonded well with the Applicant and more so with the prospective adoptive father. The Director Children Services however observed that the Applicants got married on 16th August, 2016, and recommend that the Applicants wait for the three years requirement of marriage to lapse before proceeding with the joint application for the proposed adoption. He referred to

Section 19 Children Act 2001.

The guardian ad litem, S. K. I 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 kinship adoption. They are capable of taking on the challenge of raising the child in this matter and have provided financial support while the child and her sibling resided with their maternal grandmother. The child was in court during the hearing and appeared to have bonded well with the prospective adoptive father. She was jovial and related well with both Applicants. The child was observed to be in good health and in good spirits.

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. Under **Section 19 Children Act 2001:**

“No child shall be delivered into care and possession of an adopter by or on behalf of an adoption society until—

- a. **The case committee has considered the reports required under regulation 18;**
- b. **The adopter has been approved by the case committee;**
- c. **The adoptive parent has read and understood the explanatory memorandum for adopters set out in the Seventh Schedule, and has duly signed the certificate of acknowledgment attached to the memorandum;**
- d. **The adopters, in the case of joint applicants, have been married for at least three years prior to the date of commencement of adoption arrangements.”**

11. I have considered the reservations of the Director Children Services but also note the submissions of Miss Avelyn Karungu, the officer representing Change Trust Adoption Society on the issue of the period under which the Applicants have been married. Miss Karungu told the court that the Committee that freed this child met on 8th December, 2016, and they freed the child for adoption by the biological mother and her husband for three main reasons upon deliberation on the case.

- i. The adoption was found to be in the best interest of the child;
- ii. The biological mother has granted her consent to the adoption.
- iii. The current guardian who is the maternal grandmother granted her consent stating that she is elderly and required the parents of the child to take up the responsibility of caring for her.

12. For 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 7th December, 2016 and order as follows:

i. The Applicants, A. W. C. and S. N. I are hereby allowed to adopt **Baby I. W.** who shall henceforth be known as **I. W. C.**

ii. Her date of birth is 15th March 2013. She was born in Kenya and the place of birth is Kiambu.

iii. S. W. (sister to the 2nd Applicant) is hereby appointed 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 **20th day of April 2017.**

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L. A. ACHODE

JUDGE