

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 3 OF 2017

IN THE MATTER OF CHILDREN'S ACT NO. 8 OF 2001

AND

IN THE MATTER OF ADOPTION OF C C (CHILD)

RULING

1. On 4th May, 2015, this matter came for hearing of Originating Summons dated 20th February, 2017 seeking that M C B and L B A husband and wife respectively, be authorized to adopt Baby C C whose name after adoption is proposed to change to C B.
2. Prior to the hearing, the Director Children Services had filed a report dated 23rd February, 2017 recommending the adoption. Equally, the guardian ad litem E K M had filed her report dated 5th April, 2017 so is to KKPI Adoptive Society who filed theirs dated 12th June, 2015 all of which recommended the adoption thereby confirming that the applicants were suitable for all purposes and intents.
3. However, during the hearing, an officer from Children Department by the name of Esther, made an oral application seeking to withdraw the Director's report from the court on grounds that one of the applicants in these proceedings is a foreigner hence contravening the guidelines and moratorium issued by the principal secretary in charge of the Ministry under which children department falls.
4. Mr. Kinyanjui for the applicants expressed dismay arguing that the moratorium does not affect kinship adoption. Counsel submitted that, only international adoption is affected by the moratorium which is not the case here. He urged the court to reject the application as the same was selfish, ill informed and an abuse of the court process.
5. I have considered the application herein by the Children Officer seeking to withdraw a report from the Director Children Services dated 5th April, 2017 recommending and approving the proposed adoption herein. The said officer merely said that she was under instructions to withdraw the report on grounds that new guidelines have not been developed. I am aware of a moratorium issued by the principal secretary Ministry concerned with children affairs affecting inter-county/international adoption.

Under Section 162 of the Children Act, international adoption is defined as an adoption order made in respect of a child upon the joint application of two spouses who are not Kenyan citizens and not resident in Kenya subject to obtaining a requisite consent, proof that their country will respect and recognize the adoption and that the applicants have been found suitable to adopt the child”.

6. The instant case is not an international nor inter county adoption. This is a kinship adoption to which the 2nd applicant is a biological mother to the child in question and she has been married to the 1st applicant since 2006 and the marriage has been blessed with two biological children. The applicants are residents of Kenya and that the subject child has been staying with both applicants with the 1st applicant being recognized as the father for all purposes as intents the biological father who has since given consent having returned to Italy his home country.
7. The children officer did not submit any written letter instructing her to withdraw the report considering

that there are several related matters that we continue receiving recommendations from the same office for adoption. It will not be in the best interest of the child to allow withdrawal of the report which is already part of the court record. Application is thus dismissed and hearing to proceed.

Order accordingly.

DATED AND DELIVERED IN OPEN COURT THIS 27TH DAY OF JULY, 2017.

J.N. ONYIEGO

JUDGE

In the presence of;

.....Advocate for the applicant