



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)
JUDGMENT

1. By Originating Summons dated 20th July, 2017, but filed on 24th January, 2017, the applicants herein M C B (hereinafter referred to as the 1st applicant and L B A (hereinafter referred to as the 2nd applicant) sought for orders as follows:

- a. **That the applicants be authorized to adopt Baby C C and the child be called C B henceforth.**
- b. **That the Registrar General do make the appropriate entries in the adopted children's register in respect of Baby C B.**
- c. **That the court does issue such other orders as may be necessary in the best interest of the child.**

2. Application is supported by a joint affidavit deponed by the applicants on 20th January, 2017 and a statement in support of the application dated same day. The applicants both Christians averred that, the 1st applicant is a Netherlands citizen by birth and the 2nd respondent a Kenyan citizen by birth domiciled both in Kenya and Ethiopia as husband and wife having cohabited as such following their marriage under the Marriage Act Cap 150 Laws of Kenya at Mombasa Tamarind dhow.

3. That upon their marriage, the 2nd respondent had already been blessed with a one year old baby girl C C the subject herein out of another relationship that never matured to a marriage. The 1st applicant readily and gladly accepted and took over the said baby as his daughter. Subsequently, the couple was blessed with two biological children namely M A B born on 6th April, 2007 and H B born on 14th October, 2009.

4. The applicants who have residence both in Kenya at South B and Ethiopia where the 1st applicant is currently working with an NGO, are motivated to adopt the child so as to provide her with the 1st applicant's family name so that she can be recognized legally as his daughter for all purposes and intents. Secondly, the couple would like to have baby C also enjoy same rights and benefits just like her two siblings with whom they have grown and been brought up together by the applicants jointly as parents.

5. On 23rd February, 2017, the applicants' application for appointment of E K M as a guardian ad litem was granted and an order directing her and the Director Children Services to file their respective evaluation and investigation reports filed within 45 days.

6. Pursuant to the said order, the guardian ad litem filed her report on 6th April, 2017 recommending the adoption. The Director Children Services also filed their report dated 23rd February, 2017 on 4th April, 2017 equally recommending the adoption. However, during the hearing, a Children Officer from Children Department attempted to withdraw their report but the court overruled the same vide its ruling dated 27th July, 2017.

7. Prior to the hearing, KKPI Adoption Society had also filed their report dated 12th June, 2015 recommending the adoption after declaring the child free for adoption vide certificate S/No. [particulars withheld].

8. During the hearing, the applicants pleaded with the court to allow them adopt the baby as it will be in her best interest to stay with her siblings and the 1st applicant whom she has always known as her father since she was one year old. As the child's biological mother, the 2nd applicant told the court that the child will be comfortable staying with the rest of the family members as

she does not know any other father other than the 1st applicant.

9. According to the reports filed both by the guardian ad litem, Director Children Services and KKPI Adoption Society, the 1st applicant is currently working with an NGO based in Ethiopia earning a salary of about Kshs.305,000/= per month whereas the mother is working as an interior designer earning about 80,000/= per month. The applicants have rented a three bed roomed house in South B and have another four bed roomed house in Belgium.

10. The couple has bonded very well with the minor. They have been described as financially stable, mature and responsible hence capable of taking full responsibility, protection and care of the minor both emotionally, mentally, socially, economically and spiritually. The parents of the 1st applicant and close family members are in support of the adoption as evidenced from the correspondences to KKPI.

11. Both the biological father one A C an Italian boyfriend who has since left the country for Italy has given consent to the adoption. The said A C signed an affidavit dated 19th June, 2009 giving consent to the applicants to be guardians for the minor pursuant to Sections 158(1) (c) and 163 (1) of the Children's Act.

12. The 1st applicant is aged 45 years old and the 2nd applicant 39 years hence qualified in terms of age bracket (25 – 65 years) as required under Section 158(1) (b).

13. Before making an adoption order, a court must consider the cardinal and paramount principle i.e. "the best interest of a child". Although there is no clear cut definition in law as to what constitutes best interests of a child, Judge Kimaru at least did define the same as follows

"what is the best interest of the child has not been defined by the law. This is as it should be because the best interests of each particular child will depend on the circumstances of each particular case at any one particular time. What is not in dispute, however is that there are certain minimum requirements that have universally been accepted to constitute the best interests of the child. This includes the right of a child to be provided with shelter, food, clothing and education. The child is entitled to medical care. The child's welfare should be taken care of under the best possible circumstances. The child is entitled to parental guidance. This guidance shall, where possible be provided by both parents. The child is entitled to be given suitable, conducive and having environment in which to grow up".

(See MA v RO) (2013)eKLR)

14. Article 45(3) of the 2010 Constitution and Section 4(2) (3) of the Children Act 2001 does emphasize on the best interest of a child as a major consideration before making any decision affecting the welfare of a child.

15. Given the fact that baby C does not have any other known parent other than the step father (1st applicant) and biological mother (2nd applicant), she cannot be separated nor can she lead an independent separate life. She needs parental care, protection and guidance from parents and wherever possible reside with her parents. (See Article 19 of the African Charter on the rights and welfare of the child and Article 18 of the convention in the rights of the child.

16. This being a kinship adoption, the same shall be classified as a local adoption.

17. In a nut shell, applicants herein having met all the requirements for adoption and in the best interest of the child, I am sufficiently persuaded that the applicants herein are qualified, competent, and capable of taking care of the best interests of baby C as envisaged in the constitution and the Children's Act hence their application is allowed with orders as follows:

a. That the applicants be and are hereby authorized to adopt baby C C and henceforth the child shall be called C B.

b. That the registrar general is directed to enter this order in the adoption register.

c. That her date of birth shall be 17th January, 2004.

d. That the guardian ad litem is hereby discharged.

e. That J W B shall be the legal guardian in case of any eventuality or incapacitation affecting the applicants.

DATED AND DELIVERED IN OPEN COURT THIS 4TH DAY OF AUGUST, 2017.

J.N. ONYIEGO

JUDGE

In the presence of:

.....Advocate for the applicants