



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 8 OF 2017

FAMILY DIVISION

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

AND

IN THE MATTER OF ADOPTION OF BABY S W A (CHILD)

AND

IN THE MATTER OF THE APPLICATION FOR ADOPTION

BY J A S AND M K A

JUDGMENT

1. J A S a German national and M K A a Kenyan citizen hereinafter referred to as the 1st and 2nd applicants respectively, came to court vide Originating Summons dated 7th February, 2017 and filed in court on the same day pursuant to Sections 158, 159 and 164 of the Children's Act and Section 34 of the Interpretation and General Provisions Act Chapter 2 and Section 3A of the Civil Procedure Act Chapter 21 of the Laws of Kenya seeking orders as follows:-

- (a) That H N M of P.O. Box 12585-00400, Nairobi be appointed as guardian ad litem of S W A S.**
- (b) That the applicants be authorized to adopt S W A S.**
- (c) That upon adoption, S W A be known as S W A S.**
- (d) That the Registrar General be directed to enter this adoption into the Register of Adoptions.**
- (e) That the child shall be presumed to be a Kenyan citizen and be accorded all rights of immigration that accrue to Kenyan citizens.**

2. Application is supported by a joint statement in support of the application and a verification affidavit also jointly sworn by the applicants on the 7th February, 2017.

3. The applicants are in a monogamous marriage which was solemnized on the 26th March, 2011 at [particulars withheld] within Nairobi under the Marriage Act Cap 150 Laws of Kenya.

4. Prior to their marriage, the 2nd applicant was engaged in her previous marriage relationship to A T D an Ethiopian national with whom she divorced on 21st February, 2005 vide Nairobi Divorce Case No. 1/2004. During the subsistence of her marriage to A T, they were blessed with two children namely S W A the subject of this proceedings born on 2nd August, 2000 and S A (male) also a subject of adoption proceedings in Adoption Cause No. 9/2017 born on 6th March, 1999.
5. Upon their marriage, the 2nd applicant moved together with her two children to her new marriage an arrangement the 1st applicant graciously accepted and took the two children as his. Subsequently, the couple was blessed with two biological children namely N L A (female) born 16th April, 2011 and E J A born 25th April, 2013.
6. Since celebration of the marriage, the couple has been staying in Kenya together with the four children and have since settled at [particulars withheld] estate where they have acquired property comprising of a permanent four bed roomed house. The 1st applicant is a legal researcher working with an international NGO and the 2nd applicant is an accountant by profession who does business.
7. The motivation to adopt baby S is born out of love for the child and also the desire by the 1st applicant to fill in the gap of fatherhood left by the biological father to the subject following his divorce with the mother. Secondly, the 1st applicant would like to see that the four children have common legal identity in terms of parenthood and unity without any one feeling discriminated and also a bright future with good education and inheritance.
8. Equally, it is the desire of the 2nd applicant being the biological mother to the child to bring up together her children and also to have the two children from her previous marriage (S included) bond with the other two siblings sired by the 1st applicant with whom they can acquire common legal identity in so far as their father's name and particulars are concerned.
9. Prior to petitioning this court for the orders sought, Little Angels Adoption Society made home visits and conducted an inquiry and prepared a report dated 16th December, 2016 recommending the adoption. Consequently, the child was declared free for adoption by Little Angels Adoption Society on 16th December, 2016 and a certificate S/No [particulars withheld] issued after obtaining all necessary consents from the 2nd applicant and the biological father.
10. On 6th April, 2014, H N M was appointed as a guardian ad litem following a Chamber Summons dated 7th February, 2017 premised on her consent and affidavit in support deponed on even date.
11. Prior to the hearing, the guardian ad litem filed her report dated 7th July, 2017, Director Children's Services filed theirs on 27th June, 2017, and Little Angels relied on theirs dated 16th December, 2016. Both reports were positive and indeed did recommend the adoption.
12. During the hearing, both applicants, the minor, biological father to the baby one A gave evidence in court each urging the court to allow the adoption.
13. I have considered the application herein, reports from the relevant and legally required stakeholders and evidence by the applicants. Is baby S available for adoption? Are the applicants suitable for purposes of adopting the subject herein?
14. The applicants have been married now for seven years. Since their union, they have been staying with baby S. Her biological father divorced with the mother in the year 2005. The baby has bonded very well with the 1st applicant her step-father. During her appearance in court, she was too close to the 1st applicant and quite often held his hand. This is a sign of good bonding.

15. A visit by Little Angels, the guardian ad litem and Children Department to the couple's home revealed that the child is comfortable. She has been enrolled at [particulars withheld] School which is an international institution. She has her own bed room and lives in a conducive environment for proper and sound upbringing.

16. Both parents are financially stable with a combined annual income of 500,000/= and spiritually well oriented being Christians which is a plus to the spiritual, emotional, mental and psychological well being of the child. The child is assured of a bright future, education, good health, shelter and above all inheritance both of which are in her best interest.

17. Before making orders of this nature, the court must be satisfied that a child's best interests are taken care of. Article 53 (2) of the Constitution provides the guiding principle to that extent as follows:-

“A child's best interests are of paramount importance in every matter concerning the children”.

Similar position is articulated under Section 4(2) (3) of the Children's Act No. 8 of 2001.

18. This is a local/kinship adoption by virtue of the 2nd applicant being a Kenyan. Regarding their age requirement, the 1st applicant is aged 38 years and the 2nd applicant 44 years which is well within the age bracket of between 25 years and 65 years and 21 years above the child in compliance with Section 158(1) of the Children's Act.

19. In a nutshell, the applicants herein, in my opinion have fulfilled the requirement for local adoption under the Children Act and that they have passed the social test during placement that they are capable of discharging their parental responsibility.

20. For the above reasons stated, I am convinced that the applicants herein deserve the orders sought and in the best interests of the child, the

Originating Summons dated 7th February, 2017 be and is hereby allowed with orders that:

(a) That the applicants herein J A S and M K A are hereby allowed to adopt baby S W A who henceforth shall be known as S W A S.

(b) That her date of birth shall be 2nd August, 2000.

(c) That the Registrar General is directed to enter this adoption order into the Adoption Register.

(d) That the child shall be presumed to be a Kenyan citizen and be accorded all rights that accrue to a Kenyan citizen.

(e) That H N M the guardian ad litem is hereby discharged.

(f) That Dr. L S a friend to the 1st applicant is hereby appointed a legal guardian of the child in the event that the applicants die or are incapacitated by ill health.

SIGNED, DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER 2017.

J.N. ONYIEGO (JUDGE)

In the presence of;

.....**Advocate for the Applicants**

.....**Court Assistant**