



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
(FAMILY DIVISION)
ADOPTION CAUSE NO. 97 OF 2017
IN THE MATTER OF AN APPLICATION FOR ADOPTION OF G K -MINOR
JUDGEMENT

1. The applicants, D A A and P N C, are Kenyan citizens. They are a married couple. They seek to adopt G K. Their Originating Summons is dated 28th June 2017.

2. The child in question is a seventeen year old Form Three girl. She is a total orphan following the demise of her parents. The female applicant is her cousin. After she was orphaned, she was taken in by the female applicant's mother, who was the child's aunt, as she was a sister of the child's mother. Subsequently, the female applicant took on the responsibility of raising the child as soon as she was financially able upon getting gainfully employed. The child was freed for adoption on 6th June 2017 by the KKPI Adoption Society by their certificate number [Particulars Withheld].

3. To facilitate this adoption, the applicants have been assessed by the KKPI Adoption Society, the Director of Children Services and the guardian *ad litem*, L A M. The three have compiled and filed their reports in court. That of the Director of Children Services is dated 27th November 2017, while that of the guardian *ad litem* is dated 23rd November 2017. The report by the KKPI Adoption Society is undated, but was filed in court sometime in July 2017. All these reports are favourable and recommend the proposed adoption. The applicants have demonstrated that they have the financial and emotional capability and capacity to take care of the child. The child herself appears to have bonded well with them and considers them to be her parents. I have noted that the applicants have two biological children of their own.

4. At the hearing I noted that the age difference between the applicants and the child was fairly small, the applicants are described as 30 and 29 years old, respectively, while the child is said to be 17. I noted too that none of the agencies involved in the matter had addressed the matter. As the Director of Children Services, or his representative, was not in court, I directed that he be served for attendance on a future date to address me on that point. He was served and he did send his representative, Mr Matundura, to appear before me on 14th December 2017. He noted that the difference was not within what the law allowed, but stated that the same was a kinship adoption, emphasising that the child was a total orphan and the best interests of the child principle ought to be applied to her case.

5. This was a matter of concern to me in view of section 158(1) of the Children Act, Cap 141, Laws of Kenya, which provides as follows; -

'An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants –

(a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years, or

(b) is a relative of the child; or

(c) is the mother or father of the child.'

6. My reading of the provision is that the qualifications or requirements for adoption are in the disjunctive, and therefore the age difference issue need not be so critical where an applicant is related to the child, or, put differently, where the same is a kinship adoption, as is the case here.

7. I am satisfied that it would be in the best interests of the child that the child herein is adopted by the applicants. The applicants will be able to provide a home and a family for the child to grow up in. Consequently, the applicants shall assume all parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if she was born to them. The applicants have been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child and that the child shall have the right to inherit their property. The applicants cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

8. I am satisfied that all the legal requirements for a local adoption have been met, and I therefore make the following orders:-

(a) That the applicants, D A A and P N C, are hereby allowed to adopt the child, G K, who shall hereafter retain the same name;

(b) That the said child is Kenyan by birth and was born on 25th March 1988;

(c) That L A is hereby appointed legal guardian of the child in the event something untoward happens to the applicants;

(d) That the Registrar-General is hereby directed to enter this adoption order in the adoption register; and

(e) That the guardian *ad litem* is hereby discharged.

DATED, SIGNED and DELIVERED at NAIROBI this 21ST DAY OF DECEMBER, 2017.

W. MUSYOKA

JUDGE