



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO.87 OF 2017 (O.S)
IN THE MATTER OF BABY R (CHILD)

AND

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

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY D O O AND C A O
(APPLICANTS)

JUDGMENT

1) On 15th June 2017, D O O and C A A husband and wife respectively (hereinafter referred to as the 1st and 2nd applicants), filed originating summons dated 13th June 2017 seeking orders as follows:

- a) That L A O of Kenyan national identity card No. [particulars withheld] be appointed Guardian ad Litem of Baby R in this cause.
- b) That the consent of the biological father of the infant Baby R be dispensed with.
- c) That the applicants be authorized to adopt Baby R who is presumed to be a Kenyan citizen.
- d) That upon adoption, the child be known as R A O.
- e) That K B A of Kenyan national identity card No. [particulars withheld] be appointed as legal guardian of Baby R.
- f) That the Registrar be directed to enter this adoption into the register of the adoptions.

2) Application which is brought under Sections 158, 159, 160, 163, 164 and 169 of the Children's Act and Section 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya is premised on grounds on the face of it and a joint statement in support of the application executed on 13th day of June 2017. The applicants herein both Kenyan citizens aged 33 years old got married under Luo Customary Law some time February 2008 and later solemnized their marriage on 27th November 2011 under the African Christian Marriage and Divorce Act 151. However, the couple was not blessed with any biological child for over eight years thus prompting them by consensus albeit illegally for the 1st applicant to get a second wife for purposes of getting children.

3) As a consequence of the said consensus, in October 2012, the 1st applicant got into a second marriage

relationship (customary) with L S K. Subsequently, the second marriage gave rise to two living issues namely E J O born July, 2013 and S A born September 2015. The motivation to adopt the subject herein is premised on the desire by the applicants to give a home and love to a needy child while the second applicant will bridge the gap of satisfaction and fulfilment as a mother.

4) Both applicants are financially stable with the 1st applicant managing a Garbage collection company earning about 100,000/= monthly and the adoptive mother is a tailor by profession with a monthly income of 100,000/=. Besides, they have farm land in Homabay and rental houses in Langata southland. The applicants live in a two bedroomed house which is fully furnished thus an enabling environment for growth and development. They have fully bonded with the minor since placement on 23rd February 2017 to date.

5) The minor herein was born on 7th June 2016 at Kakamega County Hospital out of an incestuous relationship between the biological mother S O who was by then a minor and her biological father S A L who defiled her. Being a taboo in Luhya customs, the maternal uncle to Salome one H C commenced adoption process thereby offering the child to Springs Life Home who acknowledged the minor as a child in need of protection and care on 8th June 2016.

6) Subsequently, the baby was committed formally to the said Children's Home vide Kakamega Children's Court P & C Case No. 258/16 on 17th August 2016. Upon the biological mother and her uncle H signing their final consent, the baby was transferred from Springs of Life home to Thomas Barnados Home on 4th February 2017. On 15th February 2017, the child was declared free for adoption by Kenya Children's Homes Adoption Society vide Certificate S/No.[particulars withheld] and thereafter placed for care and control to the applicants herein on 23rd February 2017 for the mandatory period of three consecutive months pursuant to Section 159 (1) of the Children's Act.

7) On 21st June, 2017, L A O was appointed as a guardian ad litem and an order directing her and the Director Children Services to file their investigation and evaluation reports within 45 days. Prior to the hearing, the Director Children Services, guardian ad litem and Kenya Children's Homes filed their evaluation and assessment reports on 10th October 2017, 30th August 2017 and 3rd July 2017 respectively thus recommending the adoption.

8) I have considered the application herein and assessment reports filed by various stake holders. There is no dispute that this is a local adoption based on the fact that both applicants are Kenyan citizens. The minor herein was born out of an incestuous relationship following the act of defilement by the father hence a taboo in Luhya customs culminating to the release of the child away from the community.

9) The requisite consents were obtained from the biological mother and her uncle. The child has been under the care and control of the applicants for more than three months since 23rd February 2017. The applicants are Christians with clear criminal record and social background. They are aged 33 years old hence falling within the age bracket of 25 – 65 years for purposes of adoption in compliance with Section 158 (2).

10) Home visits by both stake holders revealed that the applicants are financially stable with a combined income of Kshs.200,000/=. They own property including rental houses and land for farming hence an assurance of inheritance. Medical records further reveal that they are physically, emotionally and psychologically stable. The child has fully bonded with the adoptive parents. During the hearing, the applicants exhibited a sense of love and bonding with the child with whom they sat closely. They pleaded with the court to allow them adopt the child whom they have come to treat like their biological child.

11) Before making orders with regard to adoption, the best interests of the child is paramount in compliance with Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children's Act. The child is regarded as an outcast being a product of incest between the mother and grandfather. Her life is definitely under threat and in danger (**see-In Re AO (infant) (2008) 1KLR (G&F).**)

12) Accordingly, I am satisfied that, it is in the best interest of Baby R to get a home, parental guidance and care, shelter, food, clothing, education and above all an assurance for inheritance. For those reasons, application for adoption is hereby allowed with orders as follows:

- a) That the applicants herein be and hereby authorized to adopt Baby R who is presumed to be a Kenyan citizen.**
- b) That upon adoption, the child be known as R A O.**
- c) That the date of birth be presumed to be 7th June 2016.**
- d) That the consent of the biological father be and is hereby dispensed with.**
- e) That the registrar general be directed to enter this order into the register of adoptions.**
- f) That K B A be and is hereby appointed as legal guardian.**
- g) That the guardian ad litem herein be and is hereby discharged.**

SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF DECEMBER, 2017.

.....

J. N. ONYIEGO

(JUDGE)

In the presence of:

Ms Kathungu holding brief for Ms Gathogori...Counsel for the Applicants

Mr. Edwin.....Court Administrator