



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 25 OF 2017 (O.S)

IN THE MATTER OF E C R (MINOR)

AND

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

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY R O O AND M O
(APPLICANTS)

JUDGMENT

1) R O O and M O hereinafter referred to as the 1st and 2nd applicants respectively, came to court vide Originating Summons dated 14th March 2017 pursuant to Sections 158, 159 and 160 of the Children's Act, rule 3 of the guardianship of children (practice and procedure) rules and Section 1A, 1B and 3A of the Civil Procedure Act seeking orders as hereunder:

- a) That O I W be appointed as Guardian ad litem in respect of baby E C R.
- b) That the applicants R O O and M O be authorized to adopt baby E C R.
- c) That the name of the child be changed to read K E O.
- d) That this honourable court do make an order directing the registrar general to make an entry in the adopted children's register recording the adoption.
- e) That any other order be made as this honourable court may deem fit.

2) Application is based on grounds on the face of it and affidavits deponed separately on the 14th March 2017 by the applicants. Through Chamber Summons dated 25th April 2017 filed the same day, the applicants sought the appointment of O I W as guardian ad litem which prayer was granted on 22nd June 2017 and the Director Children Services directed to file investigative report within 45 days.

3) The applicants herein who are husband and wife and Kenyan adult citizens of sound mind celebrated their monogamous marriage on 15th December, 2001 under African Christian Marriage and Divorce Act Cap 151 (now repealed). The first applicant who is aged 42 years old holds a Bachelor's degree in B. Coms from [Particulars withheld] University and is currently working as an accountant with [Particulars Withheld] Specialist Hospital. The second applicant aged 39 years old is also a holder of a bachelor's degree in finance from [Particulars withheld] University. She is also working in the law firm of

[Particulars Withheld] Company Advocates as an administrator as well as an accountant.

4) The couple is blessed with two living issues namely B D born 17th April 2004 and E J born 10th November 2007. Their desire to adopt the child herein is motivated by the need to share their family with a child in need, love for children and their endeavor to give back to society.

5) The subject herein presumably born on 20th August 2015 was rescued by a good Samaritan known as Ann Wanjiru on 28th May 2015. Ann who was going home from her place of work within Kariobangi area in Nairobi, came a close the baby girl who had been abandoned on the roadside. With the help of two men present, she took the child to Buruburu Police Station and made a report vide OB No. [particulars withheld]. The child was immediately referred to Imani Children's Home for care and protection pending investigation to trace her parents. At Imani, she was named E C R and her age estimated to be 2 weeks old.

6) On 23rd November 2015, the baby was committed formally to Imani Children's Home by Nairobi Children's Court vide protection and care case No. 268/2015. Through a letter dated 14th September 2016 Buruburu police station, it was confirmed that every effort to trace the parents and or relatives had not borne any fruit. Subsequently, the child was placed under the care and control of the applicants on 13th November 2016 where she has been for over a period of three consecutive months as mandatorily required under Section 157(1) of the Children's Act for purposes of bonding.

7) Following the applicants' application dated 4th July 2016 expressing their intention to adopt the minor herein and upon conducting necessary investigation by making home visits, Buckner Kenya Adoption Society declared the child free for adoption on 16th September 2016 pursuant to Section 159(a) (1) of the Children's Act and certificate S/No. [particulars withheld] issued to that effect.

8) Prior to the hearing, the Director Children's Services, Buckner Adoption Society and the guardian ad litem filed their respective assessment reports dated 22nd August 2017, 3rd April 2017 and 6th July 2017 respectively recommending the adoption.

9) Both stake holders made visits to the applicants' home, conducted intensive enquiries and thereafter made concurring finding that, both applicants are financially stable, morally and spiritually upright, their living environment is conducive, have no criminal record, medically, mentally and emotionally fit.

10) I have considered the application herein, materials placed before the court in support and testimony by the applicants. Issues for determination are whether; the minor herein is available for adoption and secondly; whether the applicants have met necessary conditions as set out in the Kenyan Constitution, Children's Act and other relevant laws.

11) The minor herein was found and rescued by a good Samaritan within Kariobangi area where she had been abandoned by an unknown person. Every effort to trace the parents and or relatives have borne no fruit. This is evidenced by the police 1st letter dated 10th September 2016 and final letter dated 13th September 2016. In the circumstances, consent in accordance with Section 159 (1) of the Children's Act is not necessary hence the same is dispensed with. Secondly, in accordance with Section 157 of the Children's Act, any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was born in Kenya. Further, Article 14 (4) of the Constitution provides that, any child aged 8 years and below found within Kenya and whose parents are not known is presumed to be Kenyan.

12) For the above reasons stated, the minor herein is available for adoption. With regard to the applicants, they are both Kenyan citizens aged 42 years and 39 years old respectively, with no criminal record, are not homosexuals in terms of sexual orientation and mentally stable in compliance with Section 159 of the Children's Act.

13) The child has been in the applicants' care and control for over three consecutive months. The

applicants are accountants, own various properties, have sufficient sources of income as evidenced from bank statements, title deeds attached and 2nd applicant's pay slip. With a firm Christian foundation, the child is assured of responsible parental guidance, educational, emotional, psychological, medical, social, moral and economic support including inheritance of the family property factors that underpins a firm foundation of any family. These are important considerations in the best interests of a child.

14) The child has fully integrated with the adoptive parents, she is in a good school and fully bonded with the adoptive family as captured in the various reports and as manifested in court during the hearing where she closely sat and held the second applicant. This being a local adoption and in the best interest of the child as provided under Article 53(2) of the Constitution and Section 4 (2) and (3) of the Children Act, and having been satisfied that the applicants have met the necessary requirements, it is important that their application be considered and subsequently allowed for the benefit of the minor.

15) For the a foregoing stated reasons, application herein is hereby allowed with orders as follows:

- a) That the applicants herein R O O and M O, be and hereby authorized to adopt baby E C R.**
- b) That the name of the child shall henceforth be changed to read K E O.**
- c) That the date of birth shall be presumed to be 20th August 2015 and the place of birth shall be Kariobangi, within Nairobi in the Republic of Kenya.**
- d) That the registrar general shall enter this adoption order in the adoption register.**
- e) That the director Immigration department is hereby authorized to issue the child with a Kenyan passport.**
- f) That the guardian ad litem herein is hereby discharged.**
- g) That N A O sister to the 2nd applicant and her husband D M M are hereby appointed as legal guardians in case of death or incapacitation of the applicants herein.**

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

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J. N. ONYIEGO,

JUDGE

In the presence of:

.....Counsel for the Applicants

.....Court Administrator