



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAJIADO
ADOPTION CAUSE NO. 1 OF 2015
IN THE MATTER OF: THE CHILDREN ACT

AND

IN THE MATTER OF: AN APPLICATION FOR ADOPTION OF

C. O. N.**THE CHILD**

BY

A.N. O.....**1ST APPLICANT**

AND

E. N. N.....**2ND APPLICANT**

JUDGEMENT

The applicants A. N. O. and E. N. N. filed and originating summons pursuant to Section 154, 156, 157, 158, 160, 163, 164 and 170 of the Children Act No. 7 of 2001 dated 5/11/2015 and filed in court the same day. The applicants applied to be authorized to adopt C.O. N. hereinafter referred to as the child. The applicants are the sole grandparents of the child. The applicants are married under Kisii Customary Law and their marriage solemnized at Kariobangi Catholic Church in Nairobi on 23/8/1986.

During the subsistence of the marriage they were blessed with seven children who are all adults at the time of making this application. The first child C. K. N. is the biological mother to the child. The child was born on 1/4/2000 at Fatma Health Centre in Nairobi out of a relationship between C.K.N. and one A.I.K. according to the affidavit by C.K.N. filed in court on 21/12/2015. The relationship collapsed soon thereafter the birth of the child in the year 2000. The biological mother C.K.N. and the child continued to live with the applicants. The biological father according to the affidavits and documents filed in support of this application abandoned the mother and child a few months after his birth in April, 2000.

It's stated that the biological father assumed no parental responsibilities over the child despite an acknowledgement as a father in the birth certificate of the child. The whereabouts of the father were unknown to the mother and child. It's stated in the affidavit of C.K.N. mother to the child that on conducting effective search through a website www.misterseed.com used by the diaspora community to trace Kenyans, she came across a death and funeral announcement of A.I.K. biological father of the child. The death and funeral announcement dated 10/10/2006 indicated that A.I.K had passed away on the said date in the United Kingdom at Newcastle. Save for that extract duly attached to the application in support of adoptive orders, no any other communication or contact existed between A.I.K. and the child. The

affidavit by C.K.N. avers that the move to the United States of America in the year 2005 leaving the child under the care and custody of the applicants she currently resides at Arhunting, Texas 76017 in the United States of America.

From the adoption agency and children's officers' reports C.K.N. the biological mother has offered the child for adoption to her parents, applicants herein in order to secure his future. This will include but not limited to giving the child prospective adoptive 1st applicant's name. It is also stated that the child has continuously lived with the applicants at their Nkoroi Family Home. It is the recommendation of the adoption agency and children's officers' reports that the applicants are aged 62 and 60 years old respectively, which age is within the limit provided by law for one to qualify for adoption. The reports from the two organizations provide and recommend the applicants as mature, responsible couple with strong family values, secure, emotionally and psychologically disposed of to provide parental responsibilities over the child.

The applicants according to the investigations conducted by the adoption agency established that the applicants are in possession of adequate material and financial resources to make a lifelong commitment to the child's care and protection. They are determined to see the child succeed in his life endeavours drawing from their continuous care and control since his childhood. The child was freed for adoption by Change Trust Agency by their declaration dated 15/9/2015. The applicants have filed their resources and financial statements to demonstrate capability to support the child. The child had been under the care and control of the applicants. The relationship has been strengthened and from the investigations reports they both appear to have bonded well as a family.

The applicants' seven (7) biological children have consented to the adoption by filing and signing relevant commitments annexed to the application. The applicants complied with Section 160 (1) of the Children's Act which provides for an appointment of a guardian ad Litem for the child for purposes of the adoption proceedings. The child C.O.N. is revealed by the copy of his birth certificate on the court record to have been born on 1/4/2000. He is currently aged 15 years and eight months.

Being above 14 years of age, his consent to the adoption orders is required. A copy of the said consent dated 25/8/2015 is on the court record.

Under Section 159 (a) (1) of the Children's Act, the consent of the child's parents is necessary, if the parents are known. In the instant case before me the biological mother C.K.N. filed a consent dated 20/7/2015. She filed an affidavit reiterating and agreeing to the child being adopted by the applicants who are also her parents. However the consent of the biological father was not secured. The evidence though scanty indicated the biological father to the child died sometime back on 10/10/2016 in the United Kingdom at Newcastle.

This court on scrutiny and perusal of the affidavit evidence and annexures attached believed that the biological mother had conducted due diligence to trace the father to the child. Given the nature of the relationship they seemed to have had with the biological father prior and to immediately after the birth of the child. She was incapable of adducing any other evidence. The adduced evidence shows that the biological father A.I.K. may have abandoned the child at birth.

In the circumstances of this case i exercise discretion under Section 159 (1) (a) (j) of dispense with the necessary consent of the biological father on the reasons that he is incapable of giving it or presumed death or the court adopts the evidence that he appeared to have abandoned the child at birth.

The issue for determination by this court is whether the application is in the best interests of the child. Part II of the Children's Act provides safeguards for the rights and welfare of the child; of particular importance are the provisions under Section 4 of the Act which envisages the best interest and welfare principle of the child to be of paramount consideration when making decisions concerning children. The court shall in particular have regard to the ascertainable wishes and feelings of the child concerned, considered in the light of his/her age, and understanding; the child's physical, emotional and educational needs, the likely effect of any changes in the child circumstances, the child's sex, background and any

other circumstances in the matter; any harm the child may have suffered or it at risk of suffering; and where relevant, the capacity of the child parents, guardians or other involved in the care of the child in meeting his or her needs.

The Constitution of Kenya and the Children’s Act stipulates realization of the rights of the child. Such rights include right to a home, education, health and to be cared for. The applicants have demonstrated the ability and willingness to avail both material and financial resources to support the child in realizing such basic rights. The child relatives have consented to the applicants’ adoption of the child. The child himself has consented to the adoption. The family report about the applicants that home at Nkoroi – Ongata Rongai where they live is suitable environment of the child.

All in all, i find that the applicants have satisfied and complied with the conditions, restrictions and requirements set out by the Children’s Act regarding adoption of the child C.O.N. I have further considered in detail the circumstances of this case, the affidavit evidence, but most important the best interest of the child and the welfare principles. The child has lived with the applicants since birth. When the biological mother moved to the United States of America in 2005 he was left in the care and custody of the applicants. They have provided and continue to take care of him in meeting his needs.

There is no dispute that the application before me is a kinship adoption. The legal requirements for a local adoption have been met. As a result i do hereby allow the applicants’ application and make the following orders:

- a. That the applicants’ application is hereby allowed.**
- b. That the consent of the biological father is hereby dispensed with.**
- c. That the applicants are hereby authorized to adopt C.O.N. he shall be henceforth be known as C.O.N.**
- d. That the guardian Ad Litem is hereby discharged.**
- e. That the Registrar – General is hereby directed to enter this adoption order in the Adoption Register.**
- f. That the child being a Kenyan citizen by birth is entitled to all rights so provided for by virtue of the Constitution of Kenya and the Kenya Citizenship and Immigration Act to all Kenyan citizens.**
- g. That L.S.N. is hereby appointed the legal guardian of the child in the event of death or untold happening to the applicants.**

Dated, delivered in open court at Kajiado on 14th day of January, 2016.

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R. NYAKUNDI

JUDGE

Representation:

Applicants

Ms Ndegwa Counsel for the Applicants

Mr. Mateli Court Assistant