



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
ADOPTION CAUSE NO. 10 OF 2014

AND

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY C P

N N M1ST APPLICANT

V K N2ND APPLICANT

JUDGMENT

The 1st and 2nd Applicants are a male and female adult respectively, and are both Kenyan nationals aged 52 and 42 years respectively and of sound mind. They have been married to each other since 1990 when they started cohabiting after undertaking customary marriage rites. They later solemnized their marriage on 18th November 2012 under the African Christian Marriage and Divorce Act, and are resident in Kiteng'ei within Machakos County. The Applicants seek to adopt a male child known as Baby C P, and have moved the Court in this regard by way of an Amended Originating Summons dated 8th April 2014 brought under sections 154, 156, 157, 158, 160, 162 and 163 of the Children Act.

The Applicants sought the following orders in the said Originating Summons:

- i. That J M be appointed Guardian *ad litem* in this case. That the applicants be authorised to adopt baby C P alias Baby M O and the baby be known as N K M.
- ii. That J M M be appointed the legal guardian of the child.
- iii. That the Director of Children's Department do investigate the case and file a report.
- iv. That the Registrar General be directed to make in the Adopted Children's register an entry recording the adoption.

To facilitate this adoption, J M and J M M filed consents in Court to be the guardian *ad litem* and legal guardian respectively of Baby C P.

Prayer (11) of the said Originating Summons was granted during the hearing held on 29th September 2015, after an examination by the Court of the guardian *ad litem*, as was prayer (iv). The Court at a

hearing held on 26th October 2015 admitted as evidence the report by Little Angels Network Adoption Society Report dated 21st September 2011 and filed in Court on 26th October 2015. The guardian *ad litem*'s report filed in Court on 30th November 2015 was adopted by the Court as evidence during a hearing held on the same date. J K K, the Machakos Sub-County Children Officer, filed a report dated 6th January 2016 in Court on 13th February 2015, which report was presented and adopted by the Court as evidence on 16th February 2016.

Baby C P is a male child who was born On 2nd May 2011 in Coptic Hospital Emuhaya to sixteen-year old M O, after an alleged defilement by her biological father. Baby C P was willingly offered for adoption by her biological family following the family's traditions and beliefs that children born out of incestuous relationships cannot be nursed and nurtured within the family as they present a bad omen. The child's maternal grandmother, D K O, signed the final legal consent since the child's mother was at the time an infant. These facts were also confirmed by a letter dated 7th May 2011 by the Assistant Chief for Emabango Sub Location, and a social inquiry report by the Children's Department at Emuhaya district dated 10th May 2011 that were attached to the Adoption Society's Report.

Baby C P was subsequently placed under the care and protection of New Life Home Trust in Kisumu, following a court order issued on 11th May 2011 by the Maseno Children's Court. The child was subsequently transferred to New Life Home Trust in Kilimani on 19th July 2011. New Life Home Trust reported that during the child's stay at the institution, his parents or relatives had not come to claim him, neither had they received any information from the Children Department about any claimants.

Baby C P was declared free for adoption by the Little Angels Network Adoption Society by their certificate No. [particulars withheld] dated 21st September 2011 and placed with the Applicants on 30th January 2013. The said Adoption Society in its report filed in Court observed that the Applicants' application to adopt Baby C P is motivated by their desire to expand their family and have a son to share their inheritance, as their only daughter is an adult and has moved out of home. They were found to be mature and have adequate finances to cater for the child's upkeep. These findings were reiterated by the Machakos Sub-County Children Officer in his report, and he stated that from the home visit he found that Baby C P had bonded with the Applicants. Lastly, the guardian *ad litem* in her report also stated that the Applicants have taken good care of, and have bonded well with Baby C P

Having evaluated the facts of this adoption application, I note that it is seeking a local adoption and that the Applicants are joint married applicants who are at least 25 years of age and under the age of 65 years, and who wish to adopt a male child. They have therefore met the requirement set under Section 158 (1), (2) and (3) of the Children Act. In addition, the consent required under section 158(4) of the Children Act has been given. Section 158(4) of the Children Act provides as follows:

“Subject to section 159 an adoption application shall be accompanied by the following written consents to the making of an adoption order in respect of any child—

(a) the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child;

(b) in the case of a child born out of wedlock whose mother is a child, with the consent of the parents or guardian of the mother of the child;

(c) in the case of a child born out of wedlock whose father has acquired parental responsibility in respect of the child under the provisions of this Act, with the consent of the father;

(d) on the application of one of the spouses, with the consent of the other spouse;

(e) in the case of two spouses who are not Kenyan citizens and who are not resident in Kenya, with the consent of the court of competent jurisdiction or of a government authority situated

in the country where both or one of the spouses is ordinarily resident, permitting the spouses to adopt a foreign child;

(f) in the case of a child who has attained the age of 14 years, with the consent of the child.”

Section 159 which is referred to in the said section gives power and discretion to the Court to dispense with the consents where a child has been abandoned, neglected, not maintained and/or ill treated, or where the person whose consent is required cannot be found or is incapable of giving his consent, or where his or her consent has been unreasonably withheld.

In the present application the signed written consent dated 7th July 2011 of D K O, Baby C P's guardian was attached to the report by the Adoption Society. The said consent is allowed to be given under section 158 (4)(b), as the mother of Baby C P was a child at the time of giving of the consent. The Applicants have therefore fulfilled all the legal requirements relating to the adoption of Baby C P.

This court is also satisfied that the Applicants are qualified and able to take care of the child. The home visits by the guardian *ad litem*, the Adoption Society and the Children Officer established that the Applicants have the financial capability to provide for the upkeep and education of the child. The reports filed in Court pursuant to these visits also do recommend the Applicants' adoption of Baby C P. Lastly, I observed the Applicants with Baby C P in court, and it was evident that they had bonded well and that the said child is well taken care of.

This Court therefore forms the opinion that it would be in the best interest of Baby C P to be adopted by the Applicants. Consequently, the Applicants shall assume all parental rights and duties of the biological parents in respect of the adopted child, and shall treat the adopted child as if he was born to them. The Applicants have also 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 maintenance and to inherit their property. The adoption order once made is absolute and irreversible, and the Applicants cannot give up the child owing to any subsequent unforeseen condition or other changes in the child.

I accordingly allow the application for adoption. The Applicants, N N M and V K N are hereby allowed to adopt Baby C P. The child shall henceforth be known as N K M. J M M shall be the legal guardian of the child should such eventuality arise. As the child was born in Kenya, he is hereby declared Kenyan by birth. The Registrar-General is directed to enter this adoption order in the adoption register. I hereby also discharge the guardian *ad litem*.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 26th day of May 2016.

P. NYAMWEYA

JUDGE