



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO 6 OF 2015

AND

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY A AKA M

J K C1ST APPLICANT

P C S.....2ND APPLICANT

JUDGMENT

The 1st and 2nd Applicants are a male and female adult respectively, and are both Kenyan nationals aged 52 and 54 years respectively and of sound mind. They have been married to each other since 7th March 2003 under the Marriage Act, and are resident in Kitengela within Kajiado County. The Applicants seek to adopt a male child known for the purposes of these proceedings as Baby M aka A , and have moved the Court in this regard by way of an Originating Summons dated 10th March 2015 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 the requirements of section 158(4)(a) of the Children's Act be waived as provided for by Section 159(I) of the Act.
- ii. That A K be appointed guardian *ad litem* in this case.
- iii. That the Applicants be authorised to adopt baby M aka A and the baby be known as A K C.
- iv. That J K be appointed the legal guardian of the child.
- v. That the Director of Children's Department do investigate the case and file a report.
- vi. That the Registrar General be directed to make in the Adopted Children's register an entry recording the adoption.

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

Prayer (11) of the said Originating Summons was granted during the hearing held on 30th November 2015, after an examination by the Court of the proposed guardian *ad litem*, and the Court on the same date admitted as evidence the report by Kenya Children's Home Adoption Society Report dated 19th June

2015 and filed in Court on 22nd July 2016. The guardian *ad litem* subsequently filed her report in Court on 17th February 2016.

Prayer (iv) was also granted on 30th November 2015, and the report by John Mwangi, the Kajiado Sub-County Children Officer dated 15^h February 2016 was filed in Court on 16th February 2016. The two reports were presented to the Court and adopted as evidence at a further hearing held on 16th February 2016, when the proposed legal guardian also confirmed her consent and understanding of her responsibility to the child sought to be adopted at the said hearing.

A summary of these adoption proceedings is as follows. Baby M aka A is a male child who was found abandoned on 19th April 2012 in Nyamakima stage in Nairobi, and the abandonment was reported to Kamukunji Police Station. The infant was subsequently placed under the care and protection of Happy Life Children's Home, following a court order issued on 9th November 2012 by the Nairobi Children Court. The Kamukunji Police Station confirmed vide their letter of 9th May 2013 that neither the biological parents nor any other relatives had come to claim the child nor had they been traced.

The Applicants approached the Kenya Children's Home Adoption Society on 5th April 2013 for ratification for placement with two male children, with a view to eventual adoption. The Applicants were approved to be suitable adoptive parents and first placed with one child namely Baby M aka A on 25th February 2014, and a review was to be conducted after six months for consideration of a second placement. Baby M aka A had earlier on been declared free for adoption by the Kenya Children's Home Adoption Society by their certificate No. 1013 dated 8th November 2013.

The said Adoption Society in its report filed in Court observed that the Applicants' application to adopt Baby M aka A is motivated by their love for children, and they have one biological daughter who is 17 years of age, and who is supportive of, and has given her consent to the adoption. The Applicants were also found to be committed Christians who relate well with each other and are financially stable. Further, that they have taken good care of their biological daughter, and are a socially, morally and spiritually upright family that will be able to provide Baby M aka A with the best upbringing. It also recommended that the Applicants had verified their ability to take care and provide parental obligation to the infant for over sixteen months, and that they be allowed to adopt Baby M aka A.

The Kajiado Sub County Children Officer in his report stated that from the home visit he found that Baby M aka A was jovial, healthy and well-adjusted to his home environment, and had bonded with the Applicants. Further that the Applicants are financially stable and able to meet the child's basic needs including his education. Lastly, the guardian *ad litem* in her report stated that the Applicants have taken good care of and have bonded well with Baby M aka A, and recommended that they be issued with the adoption orders as prayed.

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, since Baby M aka A was found abandoned and no one has claimed him so far, the consent required to be given under section 158(4) of the Children Act can be dispensed with by this Court pursuant to the provisions of section 159(1)(a)(i) of the Children Act.

The Applicants have therefore fulfilled all the legal requirements relating to the adoption of Baby M aka A. This court is 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 and emotional 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 M aka A. Lastly, I observed the Applicants with Baby M aka A in court, and it was evident that they had bonded well and that Baby M aka A is well taken care of.

This Court therefore forms the opinion that it would be in the best interest of Baby M aka A 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, J K C and P C S are hereby allowed to adopt Baby M aka A. The consent of the biological parents of the child is hereby dispensed with in accordance with section 159(1)(a)(i) of the Children Act, since they remain unknown. The child shall henceforth be known as A K C. J K shall be the legal guardian of the child should such eventuality arise. As the child was found abandoned 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