



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ADOPTION CAUSE NO. 11 OF 2015

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF LG AND KK (MINORS)

JUDGMENT

INTRODUCTION

1. This is a judgment on an application for adoption with their extended family. The applicants, Kenyan spouses respectively aged 59 and 52, are relatives of the children the subject of this adoption whose mother E.G.G. died on 1st December 2014 leaving them under the care of their great grand-mother TNG, their grandmother R.N.G. having predeceased her on 16th September 1994. The 2nd applicant is a sister to said RNG and therefore auntie to the mother of the children and therefore in the position of grandmother to the children. The 1st applicant is the husband to the 2nd applicant who together with the 2nd applicant has since the death of the minors' grandmother in 1994 provided for the minor's mother and subsequently her children while they have lived with their great grandmother. The motivation for the adoption is the advancing age of the children's grandmother and therefore her inability to adequately provide for them the necessary help and assistance with school work, medical and social care to the school-going children. The applicants who live and work in the United States of America propose to take the children with them so that they can provide for them as members of their own family.

The Adoption Application

2. By Originating Summons dated 24th March 2015 the applicants who are Kenyan citizens resident in the United States of America seek an order that she be authorized to adopt two minors the subject of this application; upon adoption the children herein be named LGS and KKS; and that the Registrar General be directed to make the appropriate entries in the Adopted Children's Register, as provided for under section 170 of the Children Act.

JURISDICTION TO MAKE AN ADOPTION ORDER

3. Under section 163 of the Children Act, the Court before making an order of adoption is required to satisfy itself of certain matters as follows:

“163. (1) The court before making an adoption order shall be satisfied—

(a) that every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(b) that the order if made will be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child, and to the ability of the applicant to maintain and educate the child;

(c) that the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;

(d) that any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;

(e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of the child has expressed willingness to do so; and

(f) that both the applicant and the child have been assessed and evaluated by a registered adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court.”

4. Finally, the court on making an adoption order has further power to appoint a guardian for the child as provided for under section 164 of the Children Act as follows:

“164. (1) The court at the time of making an adoption order may upon the application of the adopter, or of its own motion or in the case of applicants for an international adoption shall appoint any person approved by the adopter and whose prior consent thereto has been given in writing to be the guardian of the child in the event of the adopter, or both of the adopters where two spouses have applied for the adoption order, dying or becoming incapacitated before the child is of full age.

(2) The court may, at any time before the child is of full age, on the application of the adopter, or of the guardian appointed under subsection (1) or of the child, revoke such appointment and appoint any other person to be the guardian of the child.”

THE CHILDREN

5. The Children the subject of this adoption application are two African males born of a Kenyan mother, respectively, LG aged 17 years (DOB 28th April 1999) and KK aged 7 (DOB 24th February 2009). The mother of the children who was never married died in 1st December 2014. The applicants approved for adoption of the children herein on 21st January 2015 and the children were declared free for adoption by the Kenya Children’s Home Adoption Society Case Committee on 11th February 2015.

THE PROSPECTIVE PARENTS

6. The applicants TKS and JWS are Kenya citizens of Christian faith with permanent resident status in the United states of America where they work for gain respectively as Certified family Nurse and Licensed. They have two adult children of their own SS and MS aged 28 and 25, respectively, and a grandson. They have demonstrated that they own substantial movable and immovable properties in Kenya and in the United States and reasonable income, and the Court is satisfied of their ability to provide for the children the subject of the application in addition to their own children.

CONSENTS AND APPROVALS

7. With respect of the consent of the biological father of the eldest child who is unknown, the same is waived pursuant to the provisions of section 159 of the Children Act. The child being of competent age at 17 years has, in accordance with section 158(4) (f) of the Children Act, signed a letter dated

19/12/2014 giving his consent to the adoption. As regards the 2nd child, the father one G.M.K. has by Statutory Declaration sworn on 4th February 2015 given his consent to the adoption.

STATUTORY REPORTS

8. The Guardian *ad litem*, Mr. DGG, a relative of the applicants and the children, and the Kenya Children's Home adoption society have filed reports on the proposed adoption, respectively dated 6th May 2016 and 19th July 2015, both which are positive in recommending the adoption to be in the best interest of the child. Want of a Children Officer's report was explained by failure by the Children Office in Loitokitok to file its report in good time before the hearing. The Court is willing to waive the report of the Children Officer as it is adoption with the family whose express intention of the applicants of the children is to better provide for their two deceased relatives' children, something that they have done without formal authority since the first of them died in 1994.

OBSERVATIONS AND FINDINGS OF THE COURT

9. The Court heard the testimony of the applicants, the guardian *ad litem* and a representative from the Kenya Children's Home adoption society, Mr. Peter Ndotono Njuguna, as well as observed the children in court. The children were well-groomed, happy and healthy. From its own observation, the Court agreed with the reports of the guardian and the adoption society that the adoption was in the best interests of the children.

BEST INTERESTS OF THE CHILD

10. The children who are orphaned of their mother, and who consequently have had to live with their ageing great grandmother with the support of the applicants would immensely benefit from a formalization of their support from the applicants so that they be provided for as members of the applicants' family. As urged by Counsel for the applicants, Mr. Mbullo, the Court finds that it is in the **best interests of the child**, to allow the adoption.

ORDERS

11. Accordingly, the final orders in Originating Summons dated 24th March 2015 are granted as prayed for the adoption by the applicants of the minors herein and that upon adoption the minors be named LGS and KKS. The Orders of the Court will issue in the full names of the applicants and the children.

DATED AND DELIVERED THIS 24TH DAY OF MAY 2016.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

Mr. Tamata holding brief for Mr. Mbullo for the Applicants

Mr. Moruri- Court Assistant.