



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

ADOPTION CAUSE NO. 2 OF 2016

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF BABY B M BY M M M AND A M M.

JUDGMENT

Introduction

1. The applicants filed their pleadings on 27.04.2016. The papers were drawn by P.G. Wanyonyi & CO. Advocates of 4th floor, Consolidated House Koinange Street, Nairobi. From the pleadings, J O, holder of national Identity Card Number [Particulars withheld] and of Post Office Box Number [Particulars withheld] Kakamega gave his consent to act as the Guardian Ad Litem. His affidavit in support is sworn on 20.03.2016. An affidavit of fitness of the Guardian Ad Litem was sworn by Jared Isiaya Muyonga on 20.03.2016.

The Application

2. By the exparte chamber summons dated 20.03.2016 filed pursuant to Section 160 of the Children's Act, No. 8 of 2001, The Applicants sought orders appointing the proposed Guardian Ad Litem and also prayed for an order of the court for the filing of an investigation report as to the suitability or otherwise of the applicants to adopt the subject child. The summons is supported by the joint affidavit of the applicants sworn on 20.03.2016. the 2nd applicant filed a statement in support of the application in which she confirmed that she and the applicant are wife and husband, but have no children and that they want to adopt baby B M who was born on 09.11.2010, and who was found abandoned on 10.11.2010 in Kakamega. The 2nd applicant confirmed that she fully understands the seriousness of the adoption process and that once completed, it cannot be recanted. The 1st applicant also swore his affidavit in support of statement on 20.03.2016. The affidavit was accompanied by 12 exhibits among them copies of the couple's marriage certificate and their respective identification documents. Annexure 6 is the Social Enquiry Report on baby B M The same is dated 25.05.2015. It gives a history of baby B M and confirms that since 2010, nobody had come forward to claim the child.

Further Affidavits

3. Subsequent to the initial pleadings, the applicants filed further affidavits and their joint notice to act in person. They also filed a report from the Ministry of Labour and East African Affairs, Department of children's Affairs, Kakamega Sub-County Children's Services. The report confirms that the environment in which baby B M lives is conducive for adoption and that the respective families of the two applicants support the applicants in the latters, endeavor to adopt baby B M Finally that the minor is happy and has good child parent rapport with the 2 applicants.

Hearing

4. The applicants appeared before me on 28.07.2016 and again on 20.09.2016. The court interviewed both of them and also interviewed baby B M who appeared jovial and quite at ease with each of the applicants. The minor speaks fluent English and therefore has no problem communicating with either applicant. The Court also interviewed M C H the president of [Particulars withheld] Factory based in Texas USA and chairman of [Particulars withheld] which is a NGO/Community based organization Located in [Particulars withheld] Sub-County of Kakamega County. M C H swore an affidavit on 20.09.2016 in support of the applicants' request to adopt baby B M .

Analysis

5. I have now carefully considered all the above information as well as the provisions of the Childrens' Act Number 8 of 2001. It is not lost to the court that in applications of this nature, the best interests of the child should take precedence over every other consideration. In the instant case, I noted that though the applicants are of a mixed marriage, the minor is of African descent, but having seen the three of them together, this court is satisfied that colour is not a barrier to a happy and well bonded family. That the best interests of the child B M dictate that an adoption order be made in her favour.

Conclusion

6. In light of the above, and being satisfied that the requirements of Section 163 of the Children's Act are compiled with, I now I make the following orders;-

1. That J O, holder of National Identity Card Number [Particulars withheld] and of P.O Box [Particulars withheld] Kakamega, be and is hereby appointed Guardian Ad Litem of B M (child) for purposes of these proceedings.
2. That M M M and A M M, be and are hereby authorized to adopt the minor B M a child who was found abandoned in Kakamega on 10.11.2010.
3. That the child herein shall not be removed from the jurisdiction of this court without the consent of the court during the first (5) five years of the date of this order.
4. That the costs of these proceedings shall be in the cause.

It is so ordered.

Judgment delivered, dated and signed in open court this 28th day of September 2016

RUTH N. SITATI

JUDGE

In the presence of ;-

.....both present in person.....Applicants

.....Mr. Lagat.....Court Assistant