



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
ADOPTION CAUSE NO 22 OF 2015
AND
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF BABY S

N M M.....1ST APPLICANT

R M M.....2ND APPLICANT

JUDGMENT

The 1st and 2nd Applicants are a male and female adult respectively, and are both Kenyan nationals aged 60 and 48 years respectively and of sound mind. They have been married to each other since April 1990 under the Kamba customary marriage law, and are resident in Mutomo within Kitui County. The Applicants seek to adopt a male child known for the purposes of these proceedings as Baby S, and have moved the Court in this regard by way of an Originating Summons dated 17th September 2015 brought under sections 4 and 154, of the Children Act, section 9 of the Kenya Citizenship and Immigration Act, and section 14 of the Constitution.

The Applicants also filed an application by way of a Chamber Summons contemporaneously with the Originating Summons, whereby they sought orders that J K K be appointed *guardian ad litem* in respect of the adoption of Baby S, and that the Director of Children's Department do prepare a home study report for the Court. The said orders were granted by this Court on 16th February 2016 after an examination by the Court of the proposed *guardian ad litem*. The Court on the same date also adopted a social inquiry and declaration report both dated 22nd September 2014 and filed in Court on 2nd November 2015 by the Child Welfare Society as their evidence in this adoption cause.

The Applicants seek the following orders in their Originating Summons:

- i. That the Applicants be authorised to adopt baby S.
- ii. That the consent of the biological mother be dispensed with.
- iii. That upon the making of the adoption order the said child be known as S M M.

iv. That the Registrar General do make the appropriate entry of S M M in the Adopted Children's register.

v. That the child S M M be presumed to be a Kenyan citizen born in Kenya and that the Director of Immigration Services do issue S M M with a Kenyan passport.

vi. That K K be appointed legal guardian of the child S M M.

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

The guardian *ad litem* subsequently filed his confidential report dated 2nd June 2016 in Court on 13th June 2016, and on that date asked the Court to adopt the same as his evidence. The report by Philip Nzenge, the County Co-ordinator at the Kitui Children's Services, was also filed in Court on 13th June 2016. Lastly, the proposed legal guardian also confirmed his consent and understanding of his responsibility to the child sought to be adopted at the hearing held on 13th June 2016.

A summary of these adoption proceedings is as follows, as set forth in the various pleadings and reports filed in Court. Baby S is a male child who was found abandoned on 1st April 2008 in [particulars withheld] Centre in Kitui County, and the abandonment was reported to the District Children's Office at Kitui. The infant was subsequently placed under the care and protection of A.I.C. Kitui Babies Home by the said Children's Office and later by a court order issued on 5th January 2011 by the Kitui Children's Court.

A letter from the Officer Commanding the Kitui Police Station dated 26th February 2014 filed in Court confirmed that the biological mother of the baby who was said to have a mental disability had not been traced, and her whereabouts were unknown since she abandoned the baby. A letter confirming these facts from Sudi A. Koko, the Assistant Chief of Township Su-location in Kitui dated 7th March 2014 was also filed in Court.

Baby S was placed with the Applicants on 27th March 2014 pending adoption by the Child Welfare Society of Kenya, and has lived with the Applicants since then. Baby S was also declared free for adoption by the Child Welfare Society of Kenya by their certificate No. [particulars withheld] dated 22nd September 2014.

The said Society in its report filed in Court observed that the Applicants' application to adopt Baby Sammy is motivated by the fact that they do not have a biological child, and want a child to complete their family and inherit their property. The Applicants were also found to be in a stable marriage, and to be emotionally, psychologically and financially prepared and able to bring up a child. Further, that the Applicants are committed Christians and the child would be brought up with Christian values.

The Kitui County Children Coordinator in his report also observed that the Applicants are mature, responsible and financially capable of providing for the child, and that from the home visit he found that Baby S had bonded with the Applicants, who also have support from the extended family. Lastly, the guardian *ad litem* in his report stated that the Applicants and their extended family have taken good care of and have bonded well with Baby S.

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 S 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 S. 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 S. Lastly, I observed the Applicants with Baby S in court, and it was evident that they had bonded well and that Baby S is well taken care of.

This Court therefore forms the opinion that it would be in the best interest of Baby S 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 M M and R M M are hereby allowed to adopt Baby S. The consent of the biological mother of the child is hereby dispensed with in accordance with section 159(1)(a)(i) of the Children Act, since her whereabouts remain unknown. The child shall henceforth be known as S M M. K 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*.

However, the Applicants' prayer that the Director of Immigration Department do issue the child known as S M M a Kenyan Passport is hereby denied, for reasons that under section 24 of the Kenya Citizenship and Immigration Act (Chapter 172 of the Laws of Kenya), entitlement to a Kenyan Passport is upon application to the Immigration department, and in a prescribed manner. The Applicants did not bring any evidence of their compliance in this regard, and this Court is therefore not the right fora at this stage to consider such an application.

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 19th day of September 2016.

P. NYAMWEYA

JUDGE