



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 230 OF 2014 (OS)

IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001

IN THE MATTER OF ADOPTION OF BABY J

BY

G NM AND JKN (APPLICANTS)

JUDGMENT

1. The Applicants GNM and JKN are in a monogamous marriage which was solemnized at [particulars withheld] Bahati, in Nairobi on 28th November 1998. They have no child of their own. They wish to adopt the child known as Baby J a minor of female sex, through the Originating Summons dated 3rd October, 2014. They indicate that GNM is a Freelance-self-employed driver, while JKN is a business woman. They reside in in [particulars withheld] , Kitengela and are both Christians.
2. According to a statement recorded by one Robert Njoroge, (herein after the Good Samaritan), he came across the child who is the subject of these adoption proceedings, abandoned at Jevanjee Gardens Nairobi on 30th May 2008. He reported the matter to the Central Police Station where it was booked as OB No. [particulars withheld]. He was told to keep the baby until 31st May 2008. On 31st May 2008, the matter was reported again to the Kamukunji Police Station where it was booked vide OB No.[particulars withheld].
3. On 31st May 2015 the child was referred to Thomas Barnados Home Nairobi, for care and protection. On 27th June 2008, the child was officially committed to the same home by the Senior Resident Magistrate at the Children's Court Nairobi, vide P&C Case No. [particulars withheld] . A Letter dated 8th December, 2008 from Kamukunji Police Station indicates that the biological parents of the child were not traced, nor did anyone come forward to claim the child.
4. The child was declared free for adoption on 10th December 2008 by the Kenya Children Home Adoption Society vide certificate No. 419. She was released into the custody of the Applicants for mandatory foster care pending adoption on 15th December, 2008. The Applicants also signed a Foster Care Agreement dated the same day. Since then she has been in the continuous custody and care of the Applicants. Prior to the hearing of the adoption application, Kenya Children's Home Adoption Society, an adoption society, prepared and filed a report in court.
5. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child.

6. The guardian ad litem, PMM also filed a report that was favourable and recommended the adoption of the child by the Applicants.
7. The child was in court during the hearing of the application and the court noted that she appeared to have bonded well with the Applicants. She was jovial and related well with the Applicants.
8. The Director of Children's Services filed a report dated 9th September, 2015 that recommended the suitability of the Applicants to adopt but raised issues of irregularities in the manner in which the child was processed which made it difficult for the Director to recommend that final orders be granted in favour of this application.
9. The Director stated that although the Kamukunji Police indicated that the biological parents of the child had not been traced, a letter dated 21st July 2008 by one Irene Mutile, an intern Social Worker at Thomas Barnados Home indicated that the Good Samaritan who rescued the child had been contacted by someone alleging to be the child's mother through a number given to her by Kamukunji Police.
10. On 9th September, 2015, the office of the Director called the Good Samaritan on telephone Number [particulars withheld] , Robert admitted to having rescued the child but revealed that Police at Kamukunji had declined to assist and had instead closed the case.
11. The court took note of the reports filed herein. Noting that the Director Children's Services had raised grave issues on the history of the child and was unable to recommend that the orders be granted, the court summoned the Good Samaritan and an officer from Kamukunji Police Station to come to court and shed light on the circumstances in which the child was found.
12. The Good Samaritan attended court on 5th February 2016 and gave his testimony. He confirmed that he had come upon the infant at about 6.30 p.m. or 7 p.m. on 30th May 2008 at Jivanjee Garden in the Nairobi Central Business District. The baby then aged about two months was wrapped in a baby shawl and left lying on a bench.
13. The Good Samaritan took the baby to Central Police Station where the matter was booked vide OB No.[particulars withheld] . He was referred to Kamunji Police Station where the matter was also booked the next day vide OB No.[particulars withheld] . He then took the baby to WRAP (Women Rights Awareness Programme) as directed by the police and later on, to St. Bernado's Home where she was admitted.
14. Two weeks later, he was contacted by a person who alleged that she was the baby's mother. When the Good Samaritan responded that the baby had been admitted at St. Bernados Home, the caller commented that that was "ok" and disconnected the call without giving her name or contact. She claimed to have obtained his phone number from the Kamukunji Police station.
15. Mr. Peter Ndotono from the Kenya Children's Home submitted that one Esther Wangu who was the Investigating Officer at the Adoption Society in this matter had filed a report stating that since 21st July 2008 a representative of the Home had been going to the Police station seeking to get any new information about the baby's origin. It was found that the Good Samaritan did not go to the Police to report the call from the mysterious person and the police themselves had not done much to trace the child's parents. The Police had issued a clearance letter stating that no one had come forward to claim the baby.
16. The court notes with concern the lapse on the part of the police as pointed out in the foregoing paragraphs of this Judgment. It is however, important to note that the orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of the child are paramount. **Article 53(2) of the Constitution** provides the guiding principle on this question as follows:

“A child's best interests are of paramount importance in every matter concerning the child.”

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof.

17. This is a local adoption where the Applicants have fulfilled the requirements for local adoption under the Children Act, 2001. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. Secondly they meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter on a permanent basis as would be conferred by the adoption order sought.

18. To date the child is still with the Foster parents who were found to be suitable. The Good Samaritan testified in court and said the person who called him did not give a name or contact. The said person did not present herself to the police or St. Barnardos Home to claim the baby. To date since 15th December, 2008 no one has come forward to claim the child.

19. From the foregoing, this court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants, for reasons that they are the only parents she has known and theirs is the only home she has known. Further that she has thrived under their care. The alternative would be to return her to the institution where she will become another statistics. Reasons wherefore I allow the prayers sought in the Originating Summons dated 3rd October, 2014 and order as follows:

20. The Applicants, GNM and JKN are hereby allowed to adopt baby **J** who shall henceforth be known as **GHWN**.

i. Her date of birth shall be presumed to be 31st January, 2008. She is presumed to have been born in Kenya and the place of birth shall be Nairobi.

ii. PMG and AWM (lady Applicant's sister and her husband) respectively are hereby appointed legal guardians of the child in the event that the Applicants die or are incapacitated by ill-health.

iii. I direct the Registrar General to enter this order in the Adoption Register.

iv. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.

v. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and **DELIVERED** in open court this **27th day of October, 2016**.

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L. A. ACHODE

JUDGE