



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 264 OF 2014 (OS)

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

IN THE MATTER OF ADOPTION OF BABY H

BY

J M N AND E I W (APPLICANTS)

JUDGMENT

1. The Applicants J M N and E I W are in a monogamous marriage which was solemnized in Nairobi on 4th September, 1999. They have three children of their own namely:

- 1) T N M born on 5th February, 1995
- 2) S N M born on 28th October, 1988, and
- 3) M W M born on 5th July 2009

They wish to adopt the child known as Baby H, a minor of male sex, through the Originating Summons dated 7th November, 2014. They indicate that J M N is a State Counsel in the [particulars withheld] Chambers while E I W is a teacher at [particulars withheld] Secondary School. They reside in Rongai and are both Christians.

2. Records at Thika level 5 Hospital indicate that on 28th October, 2010 the child who is the subject of this adoption proceedings was born to one E N. He was later found abandoned at the [particulars withheld] Estate within Thika on 3rd November, 2010. The child was taken back to the same hospital and admitted in the new born Unit until 21st January 2011.

3. The matter was booked via OB No. [Particulars withheld] at Thika Police Station. The child was discharged from the hospital on 21st January 2011 and placed at Happy Life Children's Home for care and protection.

4. On 18th March, 2011 the child was officially committed to the same home by the Children's court at Thika vide P&C Case No. 31 of 2011. A letter dated 12th July, 2011 from Thika Police Station indicates that the biological parents of the child were not traced, nor did anyone come forward to claim the child.

5. The child was declared free for adoption on 8th May 2012 by the Kenya Children's Home Adoption Society, vide certificate No. [particulars withheld]. He was released into the custody of the Applicants for

mandatory foster care pending adoption on 21st May, 2012 upon the Applicants signing a Foster Care Agreement dated the same day. Since then he has been in the continuous custody and care of the Applicants.

6. Prior to the hearing of the adoption application, Kenya Children's Home Adoption Society, an adoption society, prepared and filed a report in court.

7. 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.

8. The Director of Children's Services also filed a report dated 6th September, 2016 recommending the adoption for reasons that the child stands to gain the opportunities provided by becoming the son of the Applicants and growing up in a loving home with a family rather than growing up in an institution. The guardian ad litem, M/s G N M also filed a report that was favourable and recommended the adoption of the child by the Applicants.

9. The child was in court during the hearing and appeared to have bonded well with the Applicants. He was jovial and related well with the Applicants.

10. More importantly, the orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a 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.”

This principle also finds expression in the **Children Act No. 8** of **2001** and in particular **Section 4(3)** thereof.

11. This is a local adoption where the Applicants in my opinion fulfil 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 I consider 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.

12. 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. Reasons wherefore I allow the prayers sought in the Originating Summons dated 7th November, 2014 and order as follows:

i. The Applicants, J M N and E I W are hereby allowed to adopt **Baby H** who shall henceforth be known as **D B M**.

ii. His date of birth shall be presumed to be 28th October 2010. He is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be Thika.

iii. C W (sister to the female Applicant) is hereby appointed legal guardian of the child in the event that the Applicants die or are incapacitated by ill-health.

iv. The Registrar General is directed to enter this order in the Adoption Register.

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

vi. The guardian ad litem is hereby discharged.

It is so ordered.

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

L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicants