



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 186 OF 2013 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY M N AKA H

BY

K E M AND M N S (APPLICANTS)

JUDGMENT

1. The Applicants KEM and MNS are in a monogamous marriage which was solemnized at Bamburi in Kisuni, Coast Province on 16th April 2011. They have one child of their own aged eighteen (18) months.
2. The Applicants wish to adopt the child known as Baby MN aka H a minor of female sex, through the Originating Summons dated 15th August 2013. They indicate that KEM is a Clearing & Forwarding Manager with [particulars withheld] Rwanda Ltd while MNS is a business lady. They reside in Donholm and are both Christians.
3. The child in this matter according to records is said to have been born on 16th October, 2012 to one MN a minor, at the Thika Level Five Hospital. The child was conceived as a result of incest. The minor gave up the child for adoption with the consent of her mother one TNW who gave her ID number and telephone number as [particulars withheld] and [particulars withheld] respectively.
4. On 23rd August, 2012, the mother and the grandmother of the child filled and signed '**adoption of Children – Explanatory Memorandum**' and '**mother/parents offering a child for adoption form**' respectively which are the two mandatory forms indicating that they understood the meaning of giving up the child for adoption before giving their consents to the adoption.
5. The forms also indicate that the child was a product of incest between the mother of the child and one SM. The forms also indicate that the father did not acknowledge paternity nor take his parental responsibility as the child was a taboo child according to their Luyiah beliefs.
6. The child was admitted to Mama Ngina Children's Home for care and protection on the same date. On 8th November, 2012, the child was referred to Mama Ngina Children's Home for care and protection.
7. On 14th November, 2012 the child was officially committed to the same home by the Senior Principal Magistrate Court vide P&C Case No. 201 of 2012. On 1st December 2012, both the mother and the grandmother of the child signed an affidavit before an advocate of the High Court as a requirement under **section 158(a) & (b) of the Children's Act 2001**.

8. The court notes the lapse on the part of Child Welfare Society in processing the child for adoption. The said Society released the child into the custody of the Applicants for mandatory foster care pending adoption on 27th June, 2012 upon signing Foster Care Agreement dated the same day. The child was later declared free for adoption on 4th June, 2014 in accordance with **Section 156** of the **Children Act 2001** vide certificate No. [particulars withheld] . This is contrary to **Section 156(1)** of the **Children Act 2001** which provides that:

“No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with this rules prescribed in that behalf.”

9. Since then the child has been in the continuous custody and care of the Applicants. Prior to the hearing of the adoption application, Child Welfare Society of Kenya, prepared and filed a report in court.

10. 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 in this matter and the child in application No. [particulars withheld] .

11. The Director of Children’s Services also filed a report dated 20th August, 2015 recommending the adoption for reasons that the child stands to gain the opportunities provided by becoming the daughter of the Applicants and growing up in a loving home and with siblings rather than growing up in an institution.

12. The guardian ad litem, M/s FO also filed a report that was favourable and recommended the adoption of the child by the Applicants. It was her opinion following home visits that the child was being brought up in a proper and fit matter and had adapted to the new environment.

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

14. Notwithstanding the lapse on the part of Child Welfare Society as pointed out at paragraph 6 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.

15. This is a local adoption and 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.

16. 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 15th August, 2013 and order as follows:

i. The Applicants, KEM and MNS are hereby allowed to adopt **Baby MN aka H** who shall henceforth be known as **KB M**.

ii. Her date of birth shall be presumed to be 16th October, 2012. She 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. VS and SM (aunt and brother in-law to the female Applicant) are hereby appointed legal guardians 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**.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicants