



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 128 OF 2015 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY R
BY
J M K AND J S W (APPLICANTS)

JUDGMENT

1. The Applicants J M K and J S W are in a monogamous marriage which was solemnized at the Registrar's office in Nakuru on 14th May, 2014. They have no child of their own. They wish to adopt the child known as Baby R a minor of male sex, through the Originating Summons dated 20th May, 2015. From the pleadings the court gathers that J M K is an Agricultural Engineer in the [Particulars withheld], while J S W is a secretary with the [Particulars withheld]. They reside in [Particulars withheld], Nakuru and are both Christians.
2. Records indicate that the minor in this matter was reportedly abandoned in [Particulars withheld] in Githurai 45 at Check Inn hotel on 21st February, 2013. He was rescued by a Good Samaritan, one Caleb Zacharia Ouya who reported the matter to Kasarani Police Station where the report was booked via OB No. [Particulars withheld].
3. The child was referred to Happy Life Children's Home in Roysambu for care and care and protection. On 3rd May, 2013 the child was officially committed to the same home by the Nairobi Children court, vide P&C Case No. 129 of 2013.
4. A letter dated 2nd September, 2013 from Kasarani 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 29th October, 2014 by the Kenyans to Kenyans Peace Initiative vide certificate No. [Particulars withheld]. He was released into the custody of the Applicants for mandatory foster care pending adoption on 31st October, 2014, upon their 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, Kenyans to Kenyans Peace Initiative, an adoption society, prepared and filed a report in court. 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.

7. The Director of Children’s Services also filed a report dated 2nd August, 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 family setting rather than growing up in an institution. The guardian ad litem, M/s. I W N also filed a report that was favourable and recommended the adoption of the child by the Applicants.

8. 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. Both Applicants’ families support the adoption.

9. It is 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 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.”

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

10. I note that this is a local adoption and the Applicants, in my opinion 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.

11. Secondly, the Applicants 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.

12. From the foregoing, this court has formed the opinion that it is 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 20th May, 2015 and order as follows:

- i. The Applicants, J M K and J S W are hereby allowed to adopt **Baby R** who shall henceforth be known as **G K M**.
- ii. His date of birth shall be presumed to be 21st April, 2012. 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 Nairobi.
- iii. P N (sister to 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 24th day of November, 2016.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicants