



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 202 OF 2015 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY A
BY
J K M AND B W K (APPLICANTS)

JUDGMENT

1. The Applicants J K M and B W K are in a monogamous marriage which was solemnized at P.E.C.A. Kahunira in Kiambu on 30th November, 1996. They have no child of their own. They wish to adopt the child known as Baby A minor of male sex, through the Originating Summons dated 28th August, 2015. From the pleadings the court gathers that J K M is a businessman while B W K is a teacher employed by the Teachers' Service Commission They reside in Kiambu and profess the Christian faith.
2. Records indicate that the minor in this matter was reportedly abandoned at infancy at Uchumi Jogoo Road annex plot. He was rescued by two Good Samaritans namely E M and G M. The report was recorded vide OB No. 19/23/08/2014 at Jogoo Police Station on 26th August 2014.
3. On 23rd August, 2014, the child was referred to Hope House Children's Home for care and protection. On 10th October, 2014 the child was officially committed to the same home by the Makadara Children court, vide P&C Case No. 51 of 2014.
4. A letter dated 26th February, 2015 from Jogoo 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 27th February, 2015 by the Little Angels Network, an Adoption Society vide certificate No. 001613. He was released into the custody of the Applicants for mandatory foster care pending adoption on 4th March, 2015 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, Little Angels Network 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 27th July, 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 perfect alternative family setting rather than growing up in an institution. The guardian ad litem, H M W 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 and the Applicant’s 1st adopted daughter. 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.”

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

10. 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.

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. The child has thrived under their care.

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 28th August, 2015 and order as follows:

- i. The Applicants, J K M and B W K are hereby allowed to adopt **Baby A** who shall henceforth be known as **S M K**.
- ii. His date of birth shall be presumed to be 22nd August, 2014. 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. E N W and A W T (family friends to the Applicants) 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 17th day of November, 2016.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicants