



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 82 OF 2016 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF S M N

BY

A G E AND N W M (APPLICANTS)

JUDGMENT

1. The Applicants A G E and N W M are in a monogamous marriage. The Applicants began to cohabit in 2012 and later solemnized the marriage under the Marriage Act 2014 at the [particulars withheld], in Nairobi on 7th February, 2015. They have three children namely:

- i) S N N aged 16 years
- ii) S M N aged 11 years biological daughters to the female Applicant.
- iii) J A E, aged 5 years – biological child to both Applicants.

2. They wish to adopt the child known as S M N, a minor of female sex, through the Originating Summons dated 21st June, 2016. They indicate that they are both business persons. They reside at [particulars withheld] and are both Christians.

3. The child in this matter is called S M M and was born on 23rd October, 2006 to the second Applicant and the late K N N. Her father passed away on 25th December 2005. The subject child has been in the continuous joint care and protection of the Applicants since 2012 when the Applicants moved in together as husband and wife.

4. The child was declared free for adoption on 4th June 2016 by the Change Trust Adoption Society vide certificate No. [...]. The Applicants signed an Explanatory Memorandum for Biological Parent/Guardian. The first Applicant swore an affidavit in the court of First Instance Holden Buea on 5th November, 2015 confirming that the second Applicant has given her consent through an affidavit sworn on 30th October, 2015 to the 1st Applicant to undertake the adoption process both in Kenya and Cameroon.

5. The child who is now aged eleven years also signed a consent dated 23rd October, 2015 in which she

indicated that she had no objection to the proposed adoption. Prior to the hearing of the adoption application, Change Trust Adoption Society, an adoption society, prepared and filed a report in court.

6. 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 14th September, 2016 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 complete family setting. The guardian ad litem, Ms. H N M 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. She related well with the male Applicant and the Director of Children's Services Reports that she considers him as her father and she also relates well with his wider family. Both Applicants' families support the adoption.

9. 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.”

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

10. 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. The Applicants' reasons for the proposed adoption were that they would like to have legal documents that would allow the children to enjoy full benefits from male Applicant, and have legal inheritance rights over their properties. This is noble idea. The orders sought in my view will keep the already closely knit family together.

11. Reasons wherefore the prayers sought in the Originating Summons dated 21st June, 2016 are allowed with the following orders:

- i. The Applicants, A G E and N W M are hereby allowed to jointly adopt S M N who shall henceforth be known as S M E.
- ii. Her date of birth is 23rd October, 2005 and she is recognised as a citizen of Kenya.
- iii. R W M (sister to the 2nd Applicant), is hereby appointed as the legal guardian of the child, in the event that the Applicants die or are incapacitated by ill-health.
- iv. The Registrar General is hereby 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