



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 175 OF 2014
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY B K
AND
S M K1ST APPLICANT
R W W.....2ND APPLICANT

JUDGMENT

INTRODUCTION

S M K and R W W (hereafter ‘the Applicants’) filed an Originating Summons Application dated 27th June, 2014 in which they seek the following orders:

- (1) ...
- (2) ...
- (3) *That the Applicants be authorized to legally adopt baby B K who will be known as E K.*
- (4) *That the infant herein be presumed to be a Kenyan citizen.*
- (5) *That B I O and R W G be appointed as legal guardians to the minor.*
- (6) *That the Registrar General do make the appropriate entry of baby B K, the minor herein, in the Adopted Children’s Register.*

THE APPLICANTS’ CASE

In their Written Statement dated 23rd June, 2014, in support of the Application, the Applicants stated that they are Kenyan citizens and have been married for more than five years and their marriage has been blessed with one child.

That they reside in Kasarani, Nairobi and the 1st Applicant is an [particulars withheld] while the 2nd Applicant is a [particulars withheld]. Accordingly, that they have adequate resources to cater for the

minor and that in any event, they have since had the child in their custody and care.

It was their assertion that they are devoted Christians and they also wish to raise the minor in a Christian environment while teaching him Christian values and ethics.

It was also their statement that they have no interest in this matter that is adverse to the child and hence they urged the Court to allow the Application and grant the orders sought therein.

DETERMINATION

This being an Application for adoption, **Part XII** of the **Children Act, 2001** prescribes the guidelines and threshold to be met by an Applicant in Applications such as the present one. The instant Application is by a married couple and hence it is an Application lodged jointly as per the **Children Act** which at **Section 158 (1)** provides that:

An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants-

(a) Has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or

(b) Is a relative of the child; or

(c) Is the mother or father of the child.

Applying the **Children Act, 2001** to the present matter, it will be noted that the child herein was born out of an incestuous relationship between two cousins and hence he was committed to New Life Home Trust. As it stands therefore, the child is in need of alternative care and parental attention in a family environment.

Based on the material before the Court, the Applicants were assessed by the *guardian ad litem*, P W N, and Little Angels Network and were found to be suitable to adopt the child herein. According to the materials availed, the Applicants are financially and socially capable of providing for the child's needs.

The Little Angels Case Committee sitting on 21st August, 2013 assessed the Applicants' case and approved that the Applicants do adopt the child herein. Furthermore, the Committee found the Applicants suitable to adopt the child and issued a Certificate declaring the child free for adoption.

One, Mr. B I O and Mrs. R W G have both consented to being the child's legal guardian, as per their Letters of Consent, (marked annexure SMK7a) in the annexures to the Application, in the event that anything happens to the Applicants thereby rendering them unable to take care of the child.

According to the Children's Officer's Report of 20th July, 2015, the Applicants have fulfilled the legal requirements for adoption and have proved capable of taking on parental responsibility over the child in this matter during the statutory placement period prior to the adoption during which he has been under their continuous care and control. Further, they are physically and mentally fit and can be entrusted with the minor for adoption and they are financially capable of bringing up the minor as they both have stable sources of income. The Report further indicates that the child has bonded well with the Applicants and the home environment in which he is being raised in is conducive.

The Court finds that the Applicants have met the criteria of local adoptions and it would be in the child's best interest if he was adopted. The Court also notes that they are of good moral standing as evidenced by the Certificates of Good Conduct availed herein. The Court therefore holds that the Applicants shall assume the responsibilities of parenthood and the child shall be entitled to inherit from the property of the Applicants and furthermore, he shall not be given up because of any eventualities that might result.

In conclusion, the Court notes that it is in the best interest of the child herein that he be placed under the care and custody of the Applicants as he is going to have a home and a family with a secured future, with his education and wellbeing safeguarded. Furthermore, the child will have a sibling and hence it will be to his great benefit and interest.

DISPOSITION

The Applicants, S M K and R W W, are hereby authorized to adopt the child, B K. The child shall henceforth be known as E K.

He is therefore presumed to be a Kenyan Citizen by birth and thereby accorded all the entitlements of a Kenyan citizen. B I O and R W G are hereby appointed to be the legal guardians of the child should any misfortune befall the Applicants. The Registrar General is hereby directed to enter this order in the Adoption Register. The *guardian ad litem*, P W N, is hereby discharged. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 13TH DAY OF DECEMBER, 2016

M. W. MUIGAI

JUDGE

In the presence of:

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