



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 98 OF 2016
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF B S S P

K S1ST APPLICANT

D S S.....2ND APPLICANT

JUDGMENT

K S (“herein referred to as the 1st Applicant”) a Swiss national resident in Kenya and D S S (“herein referred to as 2nd Applicant”) a Kenyan Citizen is a married couple who wish to adopt the B S (“herein referred to as the child”). The 2nd Applicant is the biological mother of the child, a twin to R S and brother to P S.

The Applicants were married in 2014 as evidenced by marriage Certificate No. [particulars withheld]. They reside in [particulars withheld] Apartments off Dennis Pritt Road. The Applicants seeks by their application to be allowed by this Court to adopt the child.

The child who is the subject of the present adoption proceedings was born on 8th October 2002 to the 2nd Applicant. He resides with his mother and adopting father and siblings. He is in Standard 5 in [particulars withheld] Primary School. He does not know and has never met his biological father. At first he lived with his maternal grandmother in [particulars withheld]. When his mother and adopting father married he joined them and lives with them to date.

In an application filed on 6th October 2016, the Applicants sought among others, orders from this Court that D K B be appointed as the child’s guardian ad litem, and that the Director of Children’s Services be ordered to investigate their suitability to adopt the child and submit a report. They further sought an order that upon adoption the child be known as B S S.

The Applicants also sought to have the Court appoint R M N maternal grandmother as the child’s legal guardian. On 6th October 2016, this Court issued an order appointing D K B as the child’s guardian ad litem, and further directing the guardian ad litem and the Director of Children’s Services to file their respective reports in Court.

The Director of Children’s Services report in respect of the proposed adoption of the child by the Applicants was filed on 27th October 2016. The Children’s Officer from the Department visited the

Applicants' residence on 26th October 2016 and found the minor bonded well with the 1st Applicant and the home conducive environment for raising the family. However this report raised the following issues as required by Section 158 (4) of Children Act 2001;

- 1) **The child was not declared free for adoption**
- 2) **The child did not write consent that he wanted to be adopted**
- 3) **The 1st Applicant did not attach or produce documents to confirm financial status, criminal clearance and medical record.**
- 4) **The 1st Applicant is a sole foreign male applicant aged 75 years old; contrary to Section 158 (a) and 2 (c) of the Children Act 2001 that restricts age of an adoptive parent to 65 years old.**

Pursuant to **Section 156(1)** of the **Children Act**, Change Trust Adoption Society, prepared and filed in Court on 16th November 2016 a favorable report in respect of the proposed adoption of the child by the Applicants. The child, B S was interviewed and explained what involved his adoption to the Applicants and he was agreeable.

Other relevant documents attached to the Report are;

- 1) **The child's written consent of 15th November 2016.**
- 2) **Child's birth certificate Number [particulars withheld],**
- 3) **1st Applicant's written consent of 5th October 2016 to adopt B S as his son,**
- 4) **2nd Applicant's written consent of 5th October 2016**
- 5) **Child's medical report of 31st October 2016**

On 7th November 2016 the Case Committee interviewed the Applicants and conducted home visit filed Social Inquiry and Home Study report. They interviewed the child on 10th November 2016 and found him free for adoption and issued the certificate to declare the child free for adoption Serial Number [particulars withheld].

The guardian ad litem, D K B also filed the statutory report on 16th October 2016 made under **Section 160(2)** of the **Children Act** in which he noted that the proposed adoption of the child by the Applicant is in the best interest of the child.

This is a kinship adoption. The Applicants have satisfied the legal requirements of the adoption under **Section 163 of the Children Act 2001**. The challenge to this adoption is that the 1st applicant is beyond the requisite age to adopt a child; he is 75 years old and the required age is 65 years old. This Court considers that **Section 158 (1) of the Children Act 2001 provides;**

An adoption order maybe made upon the application of a sole Applicant or jointly by two Applicants where the Applicant or at least one of the joint Applicants;

a) has attained the age of 25 years and is at least 21 years older than the child but has not attained 65 years.....

In the instant case although the 1st Applicant is above 65 years old, the 2nd Applicant is 43 years old. Therefore the couple meets the required age as one of them is below 65 years old. The Applicants are

married, in good health, financially, emotionally and socially capable of taking care, providing love care and support to the child for his growth and development and integration as an adult member of society.

From the foregoing, the instant application by the Applicants complies with the laid down legal standards for kinship adoption. It is evident that the Applicants have fulfilled all the legal requirements relative to the adoption of the child. The consent of the biological father of the child was dispensed with, his biological father could not be traced to give consent. This Court has satisfied itself that the Applicant is qualified and able to take care of the child. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children's Services established that the Applicants have the financial and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicants with the child in Court and it was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them. The child considers the 1st Applicant to be his father and 2nd applicant is his biological mother.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Hence, this Court allows the Applicants' application. K S and D S S are hereby allowed to adopt B. Henceforth, the child shall be known as B S S. His date of birth is 8th October 2002. His place of birth shall be Nairobi County. He is presumed to a citizen of Kenya by birth. R M N shall be the legal guardian of the child should such eventuality arise. If and when the family leaves the jurisdiction of this Court or relocate to Switzerland; under **Section 163 (f) of the Children Act 2001**; the Applicants shall provide bi annual periodical reports of the child from the nearest Court or Adoption Agency or Children's department in the resident country through the Embassy to the Director of Children Services in Kenya for 3 years. This Court directs the Registrar General to duly enter this order in the Adoption Register.

The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF DECEMBER 2016

M. W. MUIGAI

JUDGE

In presence of:-

Rectified under section 99 & 100 Civil Procedure Act this **9TH** day of **JANUARY, 2017**