



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 52 OF 2015
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY RN
AND
RM1ST APPLICANT
PCK2ND APPLICANT

JUDGMENT

INTRODUCTION

RMK and PCK (hereafter ‘the Applicants) have filed an Originating Summons Application dated 20th February, 2015 in which they seek the following orders:

- (1) ...
- (2) *The Applicants be authorized to adopt RN, a minor.*
- (3) *The Children’s Department investigates the Applicants’ fitness to adopt the minor and file its report.*
- (4) *The Registrar General does make an entry in the Adopted Children Register.*
- (5) *This Honourable Court be pleased to make any other orders it deems fit and necessary.*

THE APPLICANTS’ CASE

In their Written Statement dated 20th February, 2015, they contended that they are Kenyan citizens by birth and they got married in 2002 under Kikuyu Customary laws and that they intend to convert the said marriage from a potentially polygamous marriage to a monogamous one under the **Marriage Act, 2014**.

That the marriage has been blessed with two issues and they reside in Kangemi. It was also their statement that they are the owners and directors of [particulars withheld] Services Limited, a company

that deals in air conditioning, refrigeration, mechanical ventilation and electrical services.

The Applicants stated further that they are Christians but the child in question is of Muslim religion and that his mother passed away on 6th September, 2009. Accordingly, that they have not received or agreed to receive and no person has given or agreed to make or give to them any payment or reward in consideration of the present adoption Application. Further, that they are physically and emotionally fit and thus competent to take care of the child and in any event, she has since been under their care, control and possession since his mother died.

The Applicants also stated that they have never made any such Application and that they are financially capable of taking care of the child.

DETERMINATION

Have the Applicants' made out a case to warrant the grant of the orders sought herein? On that basis, **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 orphaned at the age of two years and left under the care of the 1st Applicant, her aunt.

Based on the material before the Court, the Applicants were assessed by the *guardian ad litem*, Joseph Chege, and Buckner Kenya Adoption Services 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 Case Committee of Buckner Kenya Adoption Services, in its sitting of 13th July, 2015, 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. Joseph Chege has consented to being the child's legal guardian, as per the deposition of the Applicants in their Written Statement, 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 6th July, 2016, 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 period during which she 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 she is being raised in is conducive.

Additionally, that the proposed adoption herein involves a close family relationship where the female

Applicant is the child's aunt and together with the male Applicant, they have provided upkeep for the child since the demise of her biological mother.

In the circumstances, 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, she 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 she be placed under the care and custody of the Applicants as she is going to have a home and a family with a secured future, with his education and wellbeing safeguarded.

DISPOSITION

The Applicants, RMK and PCK, are hereby authorized to adopt the child, RNK. She is therefore presumed to be a Kenyan Citizen by birth and thereby accorded all the entitlements of a Kenyan citizen. Joseph Chege is hereby appointed to be the legal guardian 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*, Joseph Chege, 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: