



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 9 OF 2016
IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY AP

JAG1ST APPLICANT

IWM 2ND APPLICANT

JUDGMENT

INTRODUCTION

JMG and IWM (hereafter ‘the Applicants’) have filed an Originating Summons Application dated 22nd January, 2016 in which they seek the following orders:

(1) ...

(2) ...

(3) *That the Applicants be authorized to adopt Baby AP who shall thereafter be known as JJGM.*

(4) *That the child be presumed to be a Kenyan citizen by birth.*

(5) *That the Registrar General be directed to enter the adoption in the Adopted Children Register.*

(6) *That the Court be pleased to make any further orders it deems necessary.*

THE APPLICANTS’ CASE

In their Written Statement dated 22nd January, 2016, in support of the Application, the Applicants averred that they have been married since October, 2007 and their marriage is not polygamous and that they are Kenyan citizens both born in 1977 and they have a six year old daughter.

It was their statement that the 1st Applicant is employed by [particulars withheld] Mobile Money while the 2nd Applicant is a Human Resource Manager at [particulars withheld]. Furthermore, that they are financially stable and able to provide for the child and they are physically and emotionally fit to be the child’s parents.

The Applicants contended further that they have had the child under their care and control for more than three months since 19th June, 2015. Additionally, that neither of them has been charged nor convicted with a criminal offence and they have appointed their family friends namely, Mr. WKL , an Administrator with African Inland Mission, and Mrs. JWK , a homemaker, to be the legal guardians of the child in the event of any incapacitation on their part before the child is of full age and fully self-reliant.

It was their final averment that they had not received or agreed to receive and no person had made or given or agreed to make or give to them any payment or reward in consideration of the present adoption and they have never made any previous Application for an adoption in respect of the child herein and neither has there been any such Application in respect of the child.

DETERMINATION

The main issue for determination is whether the Applicants have fulfilled the criteria to warrant the grant of the adoption and the orders sought in the present Application. 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 found abandoned near [particulars withheld] Secondary School in Athi River area on 28th October, 2014. The matter was reported to Athi River Police Station where it was recorded as OB No[particulars withheld]. The child was admitted to Mahali pa Maisha Children's Home on 28th October, 2014 and on application by the Athi River Sub County Children's Officer, the Child was formerly committed at the said Children's Home by the Mavoko Resident Magistrate vide **Protection and Care Case No. 64 of 2014**. Since the incident was reported, no one has appeared claiming the child.

Furthermore, according to the final Report by the OCS Athi River, Police Station, dated 6th May, 2015, since the child was abandoned, nobody has since claimed parentage or raised any issue in regard to the child. 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*, Stephen Gathira Mwangi, 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 26th June, 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. WKL and Mrs. JWK have both consented to being the child's legal guardian, as per their Letters of Consent, 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 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, JMG and IWM, are hereby authorized to adopt the child, Andrew Peter. The child shall henceforth be known as JJ GM. He is therefore presumed to be a Kenyan Citizen by birth and thereby accorded all the entitlements of a Kenyan citizen. WKL and JWK 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*, Stephen Gathira Mwangi, is hereby discharged. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 8TH DAY OF DECEMBER, 2016

M. W. MUIGAI

JUDGE

In the presence of:

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