



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ADOPTION CAUSE NO. 5 OF 2013
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF THE ADOPTION OF CHILD SN
BY
PWN
ENW.....APPLICANTS

JUDGMENT

By an Originating Summons dated 21st November, 2012 lodged in this Court under **section 154** of the **Children Act**, 2001, and subsequently amended on 2nd February, 2015, PWN and ENW applied to adopt baby SN. Alongside the Originating Summons, they also filed a chamber summons seeking to have one DNK appointed as the guardian *ad litem*. The order for appointment of *guardian ad litem* was made on 10th March, 2014 prior to the hearing of the Originating Summons and thus this judgment is more to do with the adoption order.

The applicants are a married couple. In their statement filed together with the application for the adoption order, the applicants have stated that they were born in 1976 and 1980 respectively and that they married under Kikuyu customs in 2000; the affidavit in support of this marriage, however, shows that the applicants married in 2001 “or thereabout”. The applicants have also stated that their marriage has not been blessed with issues. They both profess Christian faith and are Kenyan citizens; they also reside in Kenya where they intend to continue living for the rest of their lives. The male applicant is employed as a driver with a passenger transport company while his wife, the co-applicant operates a salon.

The male applicant exhibited a copy of a certificate of good conduct from the Criminal Investigation Department to demonstrate that he has no criminal record. Both applicants have also stated that they have not received or agreed to receive any payment or reward for an adoption order in respect of the child; neither has any person given or agreed to make any payment or reward for the order. They are not related to the child and they have never made any previous application for an adoption order.

According to the applicants, they received the child on 29th May, 2009 and she has been in their possession and care ever since; they now want to adopt the child and live with her as if she was their biological child.

At the hearing of the application, the applicants reiterated that they have mutually agreed to adopt the child and that they appreciated that once the adoption order was made they would be under obligation to cater for the child as if she was their biological child and that she will also be entitled to all the rights their own biological child would have been entitled to including inheritance rights.

The court had the opportunity to interact with the child; she told the court that she understood the applicants to be her parents and that she loved them. She knows no other parent apart from the applicants. The court noted that the child is happy and healthy and bonds well with the applicants.

A representative from the Child Welfare Society of Kenya which is a duly registered adoption society in accordance with the provisions of the Children Act, 2001 told the court that the applicants had been assessed and found to be suitable to be the child's adopting parents. He confirmed that the applicants had been living with the child since 29th May, 2009 and throughout that period the Society had made regular follow-ups and established that the applicants were suitable to adopt the child; in particular, it was established that the child had bonded well with the applicants and that they had catered for the child's basic needs including providing for food, shelter, clothing and education.

The adoption society exhibited a consent form duly signed by the child's mother demonstrating that she had consented to the adoption of her child. Accordingly, by a certificate dated 29th January, 2013, the adoption society declared the child free for adoption.

According to the reports filed in court by the Director of Children's Services and the Child Welfare Society of Kenya, the subject baby was born on 16th February, 2009 out of a forced incestuous relationship; her mother was raped by a close relative. Considering the circumstances under which the child was conceived and born, the mother willingly placed her at a Children's home for adoption.

The two reports are consistent that the prospective parents hail from Kieni West in Nyeri County. According to these reports, the male applicant is employed as a driver with a passenger transport company and he is also a small scale farmer. His wife runs a salon and assists her husband in the farming business as well; their consolidated income, according to these reports, is sufficient to sustain them and provide for the basic needs of the child. As at the time of the application, the applicants had enrolled the child in school.

The home study visits by the Director of Children Services and the adoption Society established that the child is healthy and comfortable with the applicants with whom she has bonded well. The applicants' extended family have also accepted the child as one of their own and have not raised any concern regarding her adoption into their family.

The reports indicate that the applicants married in the year 2000 and that they have not been blessed with any biological child of their own; however, even in the absence of a child of their own child, the applicants' marriage has been described as a happy marriage and has been sustained as such for the past thirteen or so years it has existed prior to the application herein. The applicants are said to have been motivated into adopting the subject child only because they were lonely without a child; they have always wanted a child companion and also to have some sense of parental responsibility. The applicants also wanted someone who would inherit their property.

The applicants' combined average monthly income, according to the adoption Society's report, is Kshs. 10,000/=. The report also indicates that the applicants own one acre of land at Kiambogo village in Nairutia in Nyeri County where they reside and also undertake small scale farming. The male applicant has an additional acre of land at Kiganjo which he inherited from his parents. Both applicants understand that the subject child is entitled to inherit these properties once the adoption order has been made. The home study report also established that both the applicants have never been charged with any criminal offence set out in the third schedule to the Children Act, 2001 or any offence for that matter and that they also do not suffer from any sort of ailment that may affect their parental responsibility towards the subject child. As far as their religion is concerned, it was established that they are Christians and they intend to expose the child to the Christian faith.

The home study report also established the applicants have a two- bedroomed house; they occupy one of the bedrooms while the other is intended for use by the child when she is old enough to sleep in her own bedroom, alone. According to the report, the house and the compound within which it is built are spacious and, more importantly, conducive for the child's development.

It is against the foregoing background that the adoption Society was of the view that all the necessary conditions for the adoption of the child had been complied with and as noted by a certificate dated 29th November, 2013, the Society declared the child free for adoption.

I have duly considered the applicant's application and what they told the court in support of this application. More importantly, I have given due regard to the interests of the child who, in my assessment, has bonded well with the applicants; she does not know them in any other capacity other than being her parents.

I have also given due regard to the two reports filed in court by the Child Welfare Society of Kenya and the Director of Children Services in respect of the child and the intending adoptive parents. These two reports are in agreement in their recommendations that adoption of child N would be in her best interests and that the applicants are the best placed persons, in the circumstances, to adopt her.

I am persuaded that considering her past and present circumstances the child needs the alternative family care; I am equally persuaded that the applicants can provide this alternative care. I am satisfied that they both understand the consequences of an adoption order in respect of baby N and their responsibilities towards her.

Further, in view of the reports by the Child Welfare Society of Kenya and the Director of Children Services I am also satisfied that the applicants have not only satisfied the conditions for adoption spelt out in **section 158** of the Children Act but that the requisite consents under that provision have been obtained; in particular I have noted the consent given by the child's mother and that she appreciates that once the adoption order is made she is permanently deprived of her parental rights towards the child. In the circumstances I am inclined to order that the child, SN, be and is hereby adopted by the said applicants. I further order that the said minor be renamed Princess NW and the Registrar General is ordered to make the appropriate entries in the Adopted Children Register accordingly.

I will make an additional order appointing DNK as the guardian of the child in the event the adopting parents dying or becoming incapacitated before the child is of full age. Consequently, the adoption society, Child Welfare Society of Kenya is hereby ordered to supervise the up-bringing of the child at such regular intervals as may be necessary and practical until the child is of full age.

It is so ordered.

Signed, dated and delivered in open court this 17th day of April, 2015

Ngaah Jairus

JUDGE