



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
ADOPTION CAUSE NO. 22 OF 2014
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY B O

JUDGMENT

INTRODUCTION

1. By Originating Summons dated 18th September 2014, the applicant Kenyan spouse seek an order that they be authorized jointly to adopt Baby B.O; that the child be named B.S.O. henceforth; and that the Registrar General be directed to make the appropriate entries in the Adopted Children's Register, as provided for under section 170 of the Children Act.

Principles for the Grant of an Adoption Order

2. Under section 163(1) of the Children Act, in granting an order for adoption child the court is required to be satisfied of certain matters as follows:

“163. (1) The court before making an adoption order shall be satisfied—

(a) that every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(b) that the order if made will be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child, and to the ability of the applicant to maintain and educate the child;

(c) that the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;

(d) that any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;

(e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of the child has expressed willingness to do so; and

(f) that both the applicant and the child have been assessed and evaluated by a registered adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court.”

THE CHILD

3. The Child named B.O. is a 2 year old 10 months African male child in good health born of a 13 year old minor from an incestuous relationship in Siaya District on 9th September 2012 was offered for adoption, consistently with the cultural beliefs of her community, and subsequently, through Kenya to Kenya Peace Initiative adoption society (KKPI), placed with The Nest rescue home, Limuru by an order of the Children Court at Limuru in case No. 6 of 2013 on 13th February 2013. He was declared free for adoption by the Kenya to Kenya Peace Initiative adoption society Case Committee on 27th February 2013 and placed with the applicants on the 14th February 2013.

THE PROSPECTIVE PARENTS

4. The applicants are Kenyan spouses of Christian faith, both certified to be medically fit with no criminal record and aged 35 and 34, respectively. They are both employed and have reasonable income. They have no other child and they have continuously lived with the child the subject of these adoption proceedings since 14th February 2013.

CONSENTS AND APPROVALS

5. The consent of the biological mother under section 159 is waived in view of the incapacity of the mother being child of 13 years in 2012; the child’s grandmother however gave consent by letter to KKPI dated 6th August 2012.

STATUTORY REPORTS

6. The guardian *ad litem*, Mr. S O A and Mr. Zephaniah Apoko, the sub-County Children’s Officer, Msambweni on behalf of the Director of Children Services, filed reports, respectively, dated 29th September 2014 and 4th February 2015 on the proposed adoption both which were positive in recommending the adoption to be in the best interest of the child.

OBSERVATIONS AND FINDINGS OF THE COURT

7. The Court heard the testimony of the applicants, the guardian *ad litem*, the representative from the Little Angels Network adoption society and the Children Officer, Msambweni sub-County as well as observed the child in court and its relation with the applicants. From its own observation, the Court agreed with the reports of the guardian and the Children Officer that the child had bonded well with the prospective parents.

BEST INTERESTS OF THE CHILD

8. The child has lived with the prospective adoptive parents since 14th February 2013 and according to relevant reports has bonded into the applicants’ family. Having found that the applicants are suitable and able to provide for the needs of child, among others, loving care, a home, maintenance and education, the child has an opportunity to be raised in a home setting, and the best interest of the child must lie in the continued life as a member of the applicants’ family.
9. Accordingly, I find that it is in the **best interests of the child** to allow the adoption so that he is permanently provided with the suitable home setting and loving care of the applicants with whom he has clearly well bonded as a child to his parents.

ORDERS

10. Accordingly, the final orders in Originating Summons dated 18th September 2014 are granted as prayed.

11. The Orders of the Court will issue in the full names of the applicants and the child.

DATED SIGNED AND DELIVERED THIS 19TH DAY OF JUNE 2015.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

Ms. Kipsang for the Applicants

Linda - Court Assistant.