



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
ADOPTION CAUSE NO. 7 OF 2015
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF PF.

JUDGMENT

INTRODUCTION

1. By Originating Summons dated 23rd February 2015, the joint applicants Kenyan spouses seek an order that they be authorized jointly to adopt Baby PF upon declaration of being a Kenyan citizen; that the child's name upon adoption be JFM; 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.

JURISDICTION TO MAKE AN ADOPTION ORDER

2. Under section 163 of the Children Act, the court before making an order of adoption is required to satisfy itself 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 PF is 4 years 7 months (est. DOB January 2011) old African male child who was abandoned and rescued at Mikindani Kwa Mwanzia, according to police records Occurrence Book (OB) 73/08/09/2011 Changamwe Police Station, and committed into the care of CWSK-Mji wa Salama Children’s home in by an order of the Children Court, Tononoka in Case No. 235 of 2012 made on 9th November 2012. Final letter by the police dated 5th November 2013 confirmed that the child had not been claimed. The child was declared free for adoption by the child Welfare Society of Kenya Case Committee on 13th June 2014 and placed with the applicants on 12th April 2013.

THE PROSPECTIVE PARENTS

4. The applicants are a Kenyan couple of Christian faith, both certified to be medically fit with no criminal record and they are a retired civil servant and primary school teacher, aged 59 and 53 respectively, and they have reasonable income and other assets including their own home and parcel of land. They have no child of their own and they have appointed a legal guardian who has consented to take care of the child in the event of death or incapacity of the applicants. **CONSENTS AND APPROVALS**

5. The consent of the biological parents of the child is waived under section 159 of the Children Act in the circumstances of the case.

STATUTORY REPORTS

6. The Guardian *ad litem*, B N N, the Child welfare Society of Kenya adoption society and Mr. J. M. Mumbo County Coordinator for Children Services, Mombasa have filed reports respectively dated 21st April 2015, 13th June 2014 and 18th May 2015 on the proposed adoption all of 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* and the representative from the Child Welfare Society of Kenya adoption society, Mr. Peru James, and considered report filed by the Children’s Officer, Mombasa 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, the adoption society and the Children Officer that the child had bonded well with the prospective parents over the two years of placement and care.

BEST INTERESTS OF THE CHILD

8. The child who was abandoned clearly requires a home with loving and caring parents. 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, and having considered the positive relevant statutory reports that the child has bonded with applicants, the court determines that the best interest of the child must lie in the continued life as a member of the applicants’ family.

9. Accordingly, as urged by the applicants in person, the Court finds that it is in the **best interests of the child** to allow the adoption so that he is provided with a family, a home and the loving care of the applicants, with whom he has clearly bonded.

ORDERS

10. Accordingly, the final orders in Originating Summons dated 23rd February 2015 are granted as

prayed.

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

EDWARD M. MURIITHI

JUDGE

DATED SIGNED AND DELIVERED THIS 31ST DAY OF JULY 2015.

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JUDGE

In the presence of: -

..... for the Applicants

..... - Court Assistant.