



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
ADOPTION CAUSE NO. 11 OF 2013
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF PK.

JUDGMENT

INTRODUCTION

1. By Originating Summons dated 16th July 2013, the joint applicant, a Kenyan lady, seeks an order that they be authorized jointly to adopt Baby PK upon declaration of being a Kenyan citizen; that the child's name upon adoption be AM; 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 PK is 9 years 5 months (est. DOB 8th February 2006) old African female child who was abandoned by the mother after delivery at Rift Valley Provincial General Hospital, Nakuru and committed into the care of New Life Home Trust by an order of the Children Court, Nakuru Tononoka in Case No. 197 of 2006 made on 29th June 2006. Final letter by the police dated 23rd April 2008 confirmed that the child had not been claimed. The child was declared free for adoption by the Little Angels Network Case Committee on 2nd February 2011 and placed with the applicant on 18th July 2012.

THE PROSPECTIVE PARENTS

4. The applicant is a Kenyan of Christian faith, certified to be medically fit with no criminal record and she is business woman aged 52, and with reasonable income and other assets including their own home and a plot of land. She has no child of their own and she has appointed a legal guardian who has consented to take care of the child in the event of death or incapacity of the applicant

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*, Mary Ndunge Kiswili, the Little Angels Network adoption society and Ms. Rahab Wambui for County Coordinator for Children Services, Mombasa have filed reports respectively dated 6th December 2013, 2nd February 2011 and 10th June 2014 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 Little Angels Network adoption society, Ms. Ann Wamuyu, 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.

8. The applicant although seeking to adopt a male child was considered for special circumstance for her great desire to adopt a child to inherit her wealth. She testified that she had sought to adopt two children but was advised by the adoption society that she could only adopt a child at a time. The adoption society representative, Ms. Ann Wamuyu, also testified that they considered the applicant as a special case:

“The applicant is recommended on special circumstances for adoption of the male child. She applied for an older child. It was not possible to get an older girl child. She was approved and placed with the child. She wanted to adopt two children. The adoption process has taken long because of the Children department’s report.”

The court was impressed by her desire to give a disadvantage child a home and an inheritance, and being

mindful of the age difference between the child and the proposed parent, the chances that the applicant would sexually abuse the child, as a rationale for the prohibition, were unlikely. The court will therefore approved the adoption by the female applicant of the male child the subject of these proceedings.

BEST INTERESTS OF THE CHILD

9. 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.

10. Accordingly, as urged by the counsel for the applicant, Mrs. Kipsang, 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 over the long period of attachment.

ORDERS

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

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

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.