



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
ADOPTION CAUSE NO. 30 OF 2014

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF CHILD RFM

JUDGMENT

INTRODUCTION

1. By Originating Summons dated 3rd November 2014, the applicant spouses – the 1st applicant a Kenyan citizen and the 2nd Applicant a Swiss national both resident status in Kenya - seek an order that they be authorized jointly to adopt the child RFM, that the child's name becomes on adoption RLSO; and that appropriate registration in Adopted Child Register be made in accordance with 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 RFM (DOB 20th March 2011) African female child in good health was abandoned by her mother at at Likoni on 22nd March 2011 according to police records OB No. 58/22/03/2011 of Likoni Police Station. The child was placed under care of Happy Rock Centre under an order of 7th September 2012 in Children Case No. 40 of 2012 at the Children Court at Tononoka, Mombasa and subsequently declared free for adoption by the Little Angels Network on the 20th November 2013. By a Final Letter dated 22nd August 2013 Likoni Police Station confirmed the child had not been claimed since she was abandoned on 22nd March 2011.

THE PROSPECTIVE PARENTS

4. The applicants are spouses aged 42 and 38, respectively; the 1st applicant being a Kenyan citizen and the 2nd applicant of Swiss nationality certified to be in good health by Dr. Collins K. Salgong of Savani Medical centre, Mombasa and to be of good conduct by the Kenya Police. They married on 16th December 2005 at Ursula Luscher Local Civil Registrar in Schoftland, Switzerland and are residents of Kenya at Diani, Mombasa. The applicants have no child of their own. The applicants are Christians who work as missionaries with Switzerland Pentecostal Church and they reside at Tumaini Apartments, Ukunda with a stable income of Ksh.140,000/- and a medical cover with Resolution Health which will cover the adopted child. They have appointed legal guardians who have accepted to take full responsibility of the child in the event of death or incapacity of the prospective parents.

CONSENTS AND APPROVALS

5. The consent of the biological parents of the child is waived under section 159 of the Children act in view of the fact that the child was abandoned and her parents had not been established at the time of making the Judgment herein. The proposed legal guardians for the child, for purposes of section 164 of the Children Act, have given consent dated 22nd October 2013.

POST-ADOPTION STATUS OF THE CHILD.

6. In terms of section 171 of the Children Act, upon adoption the child will become the child of the applicants and as such entitled to all the rights accruing to a child from her parents as if she were the natural child born inside the marriage of the applicants. Section 171 (1) is in the following terms:

“171. (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of child in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as if the child were a child born to the adopter inside marriage and in respect of the matters aforesaid the child shall stand to the adopter as a child inside marriage.”

STATUTORY REPORTS

7. The Guardian *ad litem*, Ms. Fridah Mwangi, Little Angels Network adoption society and Mr.

Zephaniah Aoko, Children's Officer, Msambweni sub-County, Mombasa on behalf of the Director of Children Services, respectively dated 1st April 2015, 20th November 2013 and 12th June 2015 on the proposed adoption all which were positive in recommending the adoption to be in the best interest of the child.

OBSERVATIONS AND FINDINGS OF THE COURT

8. The Court heard the testimony of the applicants, the guardian *ad litem*, the representative from the Little Angels Network adoption society, Ms. Ann Wamuyu, and the Children Officer, and noted the submission by the representative of the adoption society that as a local residents adoptions that the approval of the national Adoptions Committee was not necessary. The Court noted that the child had bonded well with the parents with a Minute in the record of proceedings that "child is happy and held by the [prospective mother] as she testified; with the [child's] hand on the mother's shoulder."
9. The best interest of the child who was abandoned after birth must lie in the continued life as a member of the applicants' family so that he continues to receive loving care and provision of her material and emotional needs as well as generally enjoy the rights of a child under the law provided by the applicants whom the court has found to be suitable and financially able to provide for her welfare as parents for their child. Accordingly, I find that it is in the **best interests of the child**, to allow the adoption so that she becomes a lawful child of two applicants with full legal rights of a child from her parents.

ORDERS

10. Accordingly, the final orders in Originating Summons dated 3rd November 2014 are granted as prayed. In terms of section 164 of the Children Act, the Court also appoints the named legal guardians JKO and EAO the legal guardians of the child. The Orders of the Court will issue in the full names of the applicants, the child and the legal Guardians.

DATED AND DELIVERED THIS 22ND DAY OF JULY 2015.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

Miss Mwashusha for Mrs. Kipsang for the Applicants

Linda - Court Assistant.