



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 259 OF 2015 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY C K

BY

J K S AND F M (APPLICANTS)

JUDGMENT

1. The Applicants *particulars withheld* are in a monogamous marriage which was solemnized in Nairobi on 24th August, 1996. They have a child of their own, N N K, aged 18 years and a student at the African Nazarene University. They wish to adopt the child known as Baby C K a minor of male sex, through the Originating Summons dated 26th August, 2015. From the pleadings the court gathers that J K S is a Pastor at the Christ is the Answer Ministries, while F M is a Teacher at Moi Girls Nairobi. They reside in Ngong and are both Christians.
2. Records indicate that the minor in this matter was reportedly abandoned at Kawagware area on 1st August, 2011. He was rescued by a Good Samaritan, who reported the matter at Riruta Police Station where the report was booked via OB No. 11/8/2011.
3. The child was referred to Abandoned Baby Centre for care and protection on the same day. On 21st December, 2011 the child was officially committed to the same home by the Senior Resident Magistrate Children's court, Nairobi vide Protection and Care Case No. 384 of 2011. A letter dated 18th December, 2012 by Riruta Police Station confirmed that the biological parents of the child were not traced, nor did anyone come forward to claim the child.
4. The child was declared free for adoption on 20th February, 2013 by the Little Angels Adoption vide certificate No. 001216. He was released into the custody of the Applicants for mandatory foster care pending adoption on 18th April, 2012, upon their signing a Foster Care Agreement dated the same day. Since then he has been in the continuous custody and care of the Applicants.
5. Prior to the hearing of the adoption application, Little Angels Network, an adoption society, prepared and filed a report in court. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child.
6. The Director of Children's Services also filed a report dated 3rd October, 2016 recommending the adoption for reasons that the child stands to gain parents. Further that he has flourished under the care of

the prospective adoptive parents with whom he has bonded. The guardian ad litem, *particulars withheld* also filed a report that was favourable and recommended the adoption of the child by the Applicants.

7. The child was in court during the hearing and appeared to have bonded well with the Applicants. He was jovial and related well with the Applicants, and his elder sister. The court also notes that both Applicants' families support the adoption.

8. It would be remiss however for this court to fail to point out that from the record the child was released into the custody of the Applicants for mandatory foster care pending adoption on 18th April, 2012, upon their signing a Foster Care Agreement dated the same day. This was in contravention of the law as he was yet to be declared free for adoption. The child was declared free for adoption on 20th February, 2013 by the Little Angels Adoption vide certificate No. 001216. The Adoption societies must learn to adhere to the provisions of the law when processing children for adoption because the laws were put in place to safeguard the interests of the children.

9. Be that as it may it is important to note that, the orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child’s best interests are of paramount importance in every matter concerning the child.”

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof.

10. The court observes that this is a local adoption and the Applicants, in the opinion of the court have fulfilled the requirements for local adoption under the Children Act, 2001. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. The child was observed to be in good health and in good spirits and had flourished under the care of the Applicants.

11. Secondly, the Applicants meet the social and financial parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought.

12. From the foregoing, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, the court allows the prayers sought in the Originating Summons dated 26th August, 2015 and order as follows:

- i. The Applicants, J K S and F M are hereby allowed to adopt **Baby C K** who shall henceforth be known as **K K K**.
- ii. His date of birth shall be presumed to be 3rd June, 2011. He is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be Nairobi.
- iii. R M and V M (brother and sister in law to male Applicant) are hereby appointed legal guardians of the child in the event that the Applicants die or are incapacitated by ill-health.
- iv. The Registrar General is directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **15th** day of **December, 2016**.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicants