



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO. 18A OF 2014

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY SD.

JUDGMENT

INTRODUCTION

1. By Originating Summons dated 28th July 2014 the joint applicants of Kenyan citizenship who are resident in Kenya seek an order that she be authorized to adopt Baby SD; that the child's name upon adoption be SMP; that a named legal Guardian be appointed for the child; 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.”

3. Finally, the court on making an adoption order has further power to appoint a guardian for the child as provided for under section 164 of the Children Act as follows:

“164. (1) The court at the time of making an adoption order may upon the application of the adopter, or of its own motion or in the case of applicants for an international adoption shall appoint any person approved by the adopter and whose prior consent thereto has been given in writing to be the guardian of the child in the event of the adopter, or both of the adopters where two spouses have applied for the adoption order, dying or becoming incapacitated before the child is of full age.

(2) The court may, at any time before the child is of full age, on the application of the adopter, or of the guardian appointed under subsection (1) or of the child, revoke such appointment and appoint any other person to be the guardian of the child.”

THE CHILD

4. The Child named SD is a three years 6 months (DOB 5/5/12) old African female child who abandoned and rescued at Gilgil Town GG area on 5/9/12 according to Gilgil police station records OB NO. 39/5/9/12. He was initially placed on the same date under the care of Africa Gospel Church Baby Centre by the Children Officer, Gilgil and subsequently by order of the Nakuru Children’s Court dated 22nd November 2013 in Children Case No. 520 of 2013. By a final letter dated 23rd January 2014, the Gilgil Police Station confirmed that the child has not been claimed since she was found abandoned. The child was declared free for adoption by the Kenya Children’s Home Adoption Society Case Committee on 12th February 2014. The child was placed with the applicants as foster parents on 21st March 2014.

THE PROSPECTIVE PARENTS

5. The applicants are spouses of Christian faith, respectively husband and wife, who married at Kajiado on 20th October 2013 under the African Christian Marriage and Divorce Act cap. 151 and are aged 45 and 47, respectively. The applicants have been certified to be medically fit and without criminal record. They are business persons who have reasonable income and other assets including their own home. They have no child of their own and the applicants have appointed legal guardians, one DKK, a brother to the 1st applicant, and his wife, who have consented to take care of the child in the event of death or incapacity of the applicants.

CONSENTS AND APPROVALS

6. The consents of the biological mother and father are, in the circumstances of the abandonment of the child herein, waived under section 159 of the Children Act.

STATUTORY REPORTS

7. The Guardian *ad litem*, Ms. Josephine Mokeira and the Kenya Children’s Home adoption society have filed reports on the proposed adoption, respectively dated 29th October 2015 and 6th February 2015, both which are positive in recommending the adoption to be in the best interest of the child. Although the Director of Children Services was by Order of the Court made on 4th November 2014 directed to investigate the case and report, no report was presented to court at the hearing.

OBSERVATIONS AND FINDINGS OF THE COURT

8. The Court heard the testimony of the applicants, the guardian *ad litem* and a representative from the Kenya Children's Home adoption society, Mr. Peter Ndotono, as well as observed the child in court and his relation with the applicants.
9. 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 parent. The court minuted its observation that “[The] child is well groomed, happy and appears comfortable with the female applicant. He also appears healthy, and very playful, and active.”

BEST INTERESTS OF THE CHILD

10. The child, who was abandoned by his parents shortly after birth, clearly, requires a home with loving and caring parents. Having found that the applicants, who have lived with the child for the past over one and a half years, 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.
11. Accordingly, as urged by Counsel for the applicants, Ms. Musau, 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

12. Accordingly, the final orders in Originating Summons dated 28th July 2014, are granted as prayed.
13. The Orders of the Court will issue in the full names of the applicants, the child and the legal guardians.

DATED AND DELIVERED THIS 30TH DAY OF NOVEMBER 2015.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

Ms. Musau for the Applicants

Ms. Doreen - Court Assistant.