



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Adoption Cause No. 6 Of 2012

IN THE MATTER OF: CHILDREN’S ACT NO. 8 OF 2001

AND

IN THE MATTER OF: J M ALIAS A M C

BETWEEN

H C K

S K S.....APPLICANTS

AND

LITTLE ANGELS NETWORK.....RESPONDENTS

JUDGMENT

Before me is the originating summons dated 29th May, 2012 by which the two applicants namely **H C K** (hereinafter referred to as the 1st applicant) and **S K S** (hereinafter referred to as the 2nd applicant) seek *inter alia* the following

“(b) THAT H C K and S K S be authorized to adopt J M alias A M C the minor child.

(c) THAT the name of J M alias A M C to change to J K.

(d) THAT costs of this summons be costs in the cause.”

The application was heard by way of vive voce evidence on 11th March, 2013. The applicants are a Kenyan couple who got married to each other 25 years ago. They formalized their marriage at the Jesus Celebration Centre in Malindi. The couple have borne four (4) biological children together namely

1. E K born on 15th April, 1989
2. E K born on 15th September, 1991
3. G G born on 5th October, 1995
4. C N born on 25th March, 1997

The two eldest daughters of the family are both students at Kenyatta University. The third born son is a student at the M H S whilst the last born child is in primary school in M. The couple now wishes to add a fifth child to their family by adopting the child known as J.

Section 156(1) of the Children Act provides that

“No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”

The child in question was found abandoned in Mtwapa on 1st May, 2010. He was estimated to have been born in April, 2010. He was therefore well over six (6) weeks old when this application was filed. Annexed to the summons is a certificate serial number [Particulars withheld] dated 14th December, 2011 issued by the Little Angels Network declaring the child free for adoption. I therefore find that all the prerequisites for this adoption have been complied with.

As mentioned earlier the applicants are a mature married couple who have four (4) children of their own. They are therefore not new to child-rearing. Both profess the Christian faith. The applicants both live and reside in Malindi where they own a four-bed roomed house within the town. They are both earning a reasonable income; the 1st applicant runs a business in Mtwapa whilst the 2nd applicant works as a nurse at the Malindi Hospital. I have carefully perused the social reports which indicate that this is a stable loving family with the capacity as well as the desire to provide a loving home to any child. They have both availed certificates of Good Conduct as proof that they have no problems with the law. In their oral testimony before me the applicants confirmed that they both understood the legal consequences of an adoption order and both confirmed that they were ready to accord the child all the rights due to a biological child upto and including the right to inherit.

The court did also hear from the couple’s last born child who stated that she and her siblings fully support and welcome their parents’ decision to adopt the child. The child has been living with them for about 1 ½ years and they all love him as their own. All in all I am satisfied that the applicants are fit and proper adoptive parents. I am also satisfied that they have the financial means to care for the child.

The child in question was abandoned in Mtwapa. He was picked and taken to Good Life Orphanage in Mtwapa. The matter was reported to police. The applicants met the child at the Childrens Home and he was placed into their custody under a fostering agreement on 28th December, 2011. He has therefore lived with the family since then. Since he was abandoned no person has come forward to claim the child. The matter was reported to police and their efforts to trace the biological mother have not borne any fruit. This is confirmed by the annexed letter from the OCS Mtwapa police station. There therefore exists no person from whom consent for this adoption can be sought. I therefore waive any requirement for consent in section 159(1) (a) of the Children Act.

In any matter concerning a child the court is legally obliged to give priority to the **‘best interest’** of the child. The child herein was abandoned. He was found in a sickly and malnourished state in Mtwapa. He faced an uncertain future in a Childrens Home. The applicants are providing him with an opportunity to be raised within a family in a loving stable home. This certainly would be in his best interest. I therefore allow this application for adoption and grant prayers (b) and (c) of the originating summons dated 29th May, 2012. I make no order on costs.

Dated and delivered in Mombasa this 11th day of April, 2014.

M. ODERO

JUDGE

In the presence of:

No appearances