



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 10 OF 2013

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

AND

IN THE MATTER OF: K K AND R T (THE CHILDREN)

AND

MR. J-C B

MRS. P M K..... APPLICANTS

JUDGMENT

The application as filed in an application for adoption made by two applicants namely **MR. J-C B** and **MRS. P M K B**. The two children in question are

- K K aged 16 years
- R T aged 14 years

A look at the birth certificates of the two children reveals that the 2nd applicant Ms. P K B is actually their biological mother. This fact is born out by the annexed documents as well as by the oral evidence of the parties in court. A biological parent cannot legally apply to adopt her own child. I therefore dismiss as null and void the adoption application with respect to the 2nd applicant. I will proceed to consider the merits of the application with respect only to the 1st applicant.

On 9th December, 2013 one **N M K** was approved as 'Guardian ad litem' in this matter. The application which was heard by way of vive voce evidence proceeded before me on 17th December, 2013.

Section 156(1) of the Children Act provides as follows:

“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.”

In this case the 1st child K K was born on 12th March, 1998. A copy of her birth certificate has been

annexed. The second child R T was born on 25th June, 2000. Similarly a copy of the birth certificate is annexed. Thus the children were both teenagers in November, 2013 when this application was filed. In both cases I have seen a certificate issued by the Little Angels Network which is a registered adoption agency declaring each child free for adoption. The certificates are serial Nos. [Particulars withheld] and [Particulars withheld] respectively. I am therefore satisfied that all the legal prerequisites for adoption in this case have been met.

THE APPLICANT

The applicant J-C B is a French citizen who is aged about 70 years. He told the court that he initially came to Kenya as a tourist and in the process he met and commenced a relationship with P M who was by then a single mother of the two children. The couple fell in love and formally got married in Kenya on 8th March, 2005 (the annexed marriage certificate S/No. [Particulars withheld] is proof of this). After their marriage the couple set up a home in Kilifi, Kenya where they live in a four bed-roomed house. The applicant accepted and took under his wing the two daughters of his wife. In addition the couple bore their own biological child a son named now aged 5 years. The applicant who is a retiree has made a home in Kenya with his new family. He now seeks to legally adopt the children of his wife in order to consolidate the family unit. The applicant told the court that he has four adult sons from a previous relationship in France but all his four sons are married and are independently running their own affairs.

Section 158(4)(a) of the Children Act provides that an adoption application shall be accompanied by:

“(a) the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child.”

The applicant’s legal wife who is the biological mother of both girls did sign a consent to this adoption and further she did confirm that consent in her evidence before the court. The mother confirmed that she has always raised the children as a single mother with the help of her family after their biological father abandoned them. Both children confirmed to the court that they do not know their biological father and that they have always lived with their mother and now live with their mother and step-father in Kilifi. Thus it is clear that the children’s biological father has abandoned them and has never been a presence in their lives. I therefore waive any requirement for his consent in line with section 159(1) of the Children Act.

I have carefully perused the report prepared by the Adoption Agency and I note that some concern was raised over the advanced age of the applicant (he is 72 years old). Section 158(2)(c) provides that except in **special circumstances** an order of adoption shall **not** be made in respect of an applicant who was attained the age of 65 years. I have considered the fact that this is a family adoption. The applicant merely wishes to formalize his relationship as parent and care-giver for the two girls. By all accounts he is both physically and mentally fit. A certificate of Good Conduct issued by the Kenya Police indicates that the applicant has no criminal tendencies. I find that the fact that this being a family adoption is a **‘special circumstance’** which would favour the granting of the adoption.

The evidence shows that from the time he met their mother the applicant has stepped up and provided for the needs of both children as a biological father would. He has catered for their food, shelter and clothing and has ensured that they are educated by paying their school fees. The annexed bank statements indicate that the applicant has sufficient financial means to continue providing for both girls. I am therefore satisfied that the applicant is a fit and suitable adoptive parent for both girls.

THE CHILDREN

As stated earlier both girls are the biological children of P M who is the applicant’s wife. They have always lived with the couple and their younger step-brother. The applicant is the only father-figure they have known. Both children testified before me. They spoke of their deep love and affection for the applicant and expressed gratitude for the manner in which he has taken them under his wing and provided for all their needs. Both girls have readily consented to being adopted by the applicant. I find that the

applicant has not done anything contrary or adverse to the interests or welfare of the children. The adoption will in my view advance the **best interests** of both children. It will strengthen their family unit and give them both a sense of belonging.

Based on the foregoing, I am satisfied that an adoption order would be in the best interests of the children. I therefore allow the application by the 1st applicant to adopt both children and I allow prayers (4) and (5) of the originating summons dated 16th July, 2013 with the proviso that prayer (4) is allowed only in respect of the 1st applicant Jean Claude Boutry. No order on costs.

Dated and delivered in Mombasa this 9th day of April, 2014.

M. ODERO

JUDGE

In the presence of:

Ms. Ngugi h/b Ms. Nzioki

Court Clerk Mutisya