



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
ADOPTION CAUSE NO. 2 OF 2013
IN THE MATTER OF THE CHILDREN'S ACT
AND
IN THE MATTER OF ADOPTION OF BABY C
JUDGMENT

C R, an infant, was found abandoned at Otiende Estate in Langata in Nairobi on 22nd May, 2008. The police at Langata police station took her to the Child Welfare Society of Kenya; the society which is duly registered and recognised as an adoption society under section 177(1) of the Children Act, 2001 placed the child at Mama Ngina Children's Home for care and protection. At the time of abandonment the child was approximately four years old.

Although all necessary efforts were made to trace the child's biological parents, none of them was ever traced. Further, the police who received the report of the abandonment of the child confirmed that no one ever came forward to lay claim on the child. The child remained at the children's home until 4th May, 2010 when the applicants took her custody pending adoption.

By an originating summons dated 22nd November, 2012, J M K and his wife M W N applied to adopt baby C. In support of their motion, the applicants told the court that they have continuously lived with the child since May, 2010.

From the evidence on record, the applicants married in the year 1974 but their marriage was not blessed with any issue. They are Kenyan citizens and they have no intentions of relocating to any other country. They are of Christian faith and were certified by the Criminal Investigation Department to be persons of good conduct.

The applicants told the court that one of the reasons they would want to adopt the child was because they do not have a child of their own and that they want someone who will inherit their property. They said that the child has bonded well with the family and they have happily and harmoniously lived together for almost four years now.

The applicants also confirmed that they have been able to satisfy the child's basic needs including her shelter, clothing, food and education. As at the time the application was made, the child was in class three. The male applicant told the court that he is employed at a coffee factory and that he is also a pastor at a local church; he therefore had the means to maintain the child. His wife keeps dairy cows and she is able to supplement his husband's income. She said that the child has been a source of joy to the family.

The court had the opportunity to interact with the child; the child appeared happy and healthy. She

identified the applicants as her father and mother respectively. She told the court that she always felt happy to be in the company of the applicants.

The Child Welfare Society filed a report in court declaring the child free to be adopted. Apart from the report, its representative was also invited to address the court. In declaring the child free for adoption the Society relied on **section 159(1) (c) of the Children Act, 2001** which is to effect that “***abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian for a period of at least six months***”.

Apart from declaring the child free for adoption, the Society also conducted a family background on the applicants and established that the applicants have an average income of Kshs. 8,000/= per month and they own two acres of land; with that income they are capable of providing the child with the basic needs and education.

In his report which was filed in court on 23rd October, 2013 the Director of Children Services had this to say after visiting the applicant’s home:-

The child appeared very comfortable in the presence of her adoptive parents whom she referred to as mum and dad. She is a bit shy in the presence of the visitors but she answered the questions asked to (sic) her. During the visit, she always stayed close to her mother and kept whispering something to her.

The child blends well with neighbours and her close friends like N and C whom she informed me that were her closest friends. This was evident from the way she related with the few that I met.

The family seems to have respect for each other, and the child also seemed to have great respect for her parents and visitors.

The parents are very ready to continue providing for the minor’s basic needs as their own child e.g. her basic needs including education, food, shelter, clothing and medical care. The child is healthy; she does not have history of illnesses. She is happy to have caring and loving family despite the fact that she is not aware that she is in the process of being adopted. The child bonds well with the parents, neighbours, friends and other relatives and teachers at school and speaks kikuyu fluently. The foster care has been successful. The parents have bonded well with the minor and they are ready to adopt the child.

With this report, the Director of Children Services recommended that the applicants are fit to adopt the child C.

The child’s guardian ad litem, C W M, told the court that she is the applicant’s family friend and that she has known the applicants for more than 20 years and that she has even had occasion to stay with the child. She said that should need arise, she will take up the responsibility of looking after the child.

Having considered the reports by the Child Welfare Society of Kenya and the Director of Children Services together with all the pleadings filed in court and having heard the applicants and the child’s guardian ad litem I am persuaded that the applicants’ application is merited and the adoption of the child is appropriate for the sake of her welfare and that it is also in her best interest. I am also satisfied that the pertinent conditions stipulated under **section 158** of the Children Act have been complied with and the necessary consents have been obtained; I am also convinced that both the applicants understand the consequences of making the adoption orders herein. There is no doubt that the applicants fully understand their responsibilities towards the child.

In the premises I order that the child, C R, be and is hereby adopted by the said applicants. I further order that the said minor be renamed B W M and the Registrar General is ordered to make the appropriate

entries in the Adopted Children Register accordingly.

Signed, dated and delivered in open court this 4th day of April, 2014

Ngaah Jairus

JUDGE