



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 1 OF 2013

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

AND

IN THE MATTER OF: C W

AND

IN THE MATTER OF: ADOPTION BY J V AND I N M V

JUDGMENT

The originating summons dated 17th January, 2013 has been filed by the two applicants namely **J V** (hereinafter referred to as the 1st Applicant) and **I N M** seeking authority of the court to adopt the child **C W**. On 14th March, 2013 the court approved **Ms. S N M** as the *Guardian ad litem*. The application was heard by way of oral evidence and the parties both appeared before the court on 5th February, 2014.

The applicants are a couple who got married to each other on 21st November, 2009 in Mombasa. This is evidenced by their marriage certificate serial number [Particulars withheld] a copy which was annexed to the summons. The 1st applicant is a Swiss national whilst the 2nd applicant is a Kenyan citizen. The child in question **C W** is the biological child of the 2nd applicant. The annexed birth certificate serial number [Particulars withheld] indicates that the child was born on 29th August, 1997 in [Particulars withheld] Kiambu County making her now 17 years old. Given that the 2nd applicant is the biological mother of the child. She cannot legally apply to adopt her own child. Therefore the court will only consider this application for adoption insofar as it relates to the 1st applicant.

Section 156(1) of the Children Act, 2001 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 child in question was aged 14 years in January, 2013 when this application was filed. She was well above the six (6) week age limit provided by the children Act. Annexed to the application is a certificate serial number [Particulars withheld] declaring the child free for adoption. Therefore all the legal prerequisites for adoption have been met.

THE APPLICANT

The applicant is a Swiss national who has married a Kenyan citizen who is the biological mother of the child. The couple got married in 2009 but met each other earlier. After the marriage they have settled as a family in Mtwapa Kilifi County where they own a home. The applicant is a pensioner whilst his wife runs a transport business. The couple are in a committed legal relationship for the past five (5) years. The wife upon marriage to the applicant acquired Swiss citizenship. Their desire is to legalize the status of the child to complete the family unit and enable her to adopt the applicant's name as her surname and also to acquire Swiss citizenship. Neither party has been married before and they do not have any biological child together. This is a mature couple in a committed relationship. The applicant has lived with the child since she was 3 years old. He considers her to be his own daughter. They are financially comfortable and I have no doubt that they are well able to meet the needs of the child. I find the applicant to be a suitable adoptive parent.

THE CHILD

The child in question was born in the year 2009 to the 2nd applicant and a casual worker in her home village in **[particulars withheld]** whose name she gives as 'R K'. The 2nd applicant dropped out of school due to pregnancy. She never married the father of her child. She moved to Mombasa and has raised the child as a single mother.

The child's father has never played any role in her life. Indeed in her evidence the child stated that she does not know her father and has never met him. She states that the only father she has ever known is the 1st applicant who has raised her from the age of 3 years and has provided for all her needs. In view of the fact that the biological father abandoned this child at a young age and has played no role in her life and further has never provided for her maintenance it is clear that he has no interest in the child. This is a father who has persistently neglected his child thus I waive requirement for the consent of the biological father in terms of section 159(1)(a) Children Act.

THE APPLICATION

In any matter involving a child section 4(a) of the Children Act obliges a court to give priority to the 'best interest' of the child. In this the applicant is the only father the child has ever known. The 1st applicant has raised her from the age of 3 years. He has educated her in high cost schools and she is currently enrolled at **[Particulars withheld]** School in Nairobi. Indeed the 1st applicant is the only father-figure this child has ever known. It is desirable that this family unit be made complete. I have perused the reports prepared by the Children's Department as well as by the Adoption Agency. I have noted that the child's mother and the child herself have both consented to this adoption. A letter from the Swiss Embassy confirms that upon adoption the child will be entitled to Swiss citizenship just like her mother. The child has thrived under the care of the 1st applicant. I am satisfied that this adoption will be in her best interests both now and for her future. I therefore allow this application for adoption and I grant prayers (1), (2), (3) and (4) of the originating summons dated 17th January, 2013. No order on costs.

Dated and delivered in Mombasa this 25th day of June, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Olwande h/b Ms. Kisoi for Applicants

Court Clerk Mutisya

