



IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 2 OF 2014

IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF ADOPTION OF BABY M W *alias* M B *alias* M B

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY M B BY J M
AND A K A

JUDGMENT

A K A (hereinafter referred to as the 1st Applicant) and J M A (hereinafter referred to as the 2nd applicant) have jointly filed in court this originating summons seeking *inter alia* the following orders

“1. Pursuant to the provisions of section 159 of the Children Act, 2001, this Honourable court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of section 158 of the Children Act, 2001.

2. The applicants A K A and J G M be authorized to adopt M W also known as M B also known as M B.

3. Upon the making of the adoption order, the child to be known as D M A.

4. Upon making of the adoption order N T be appointed as Guardian of the child as provided for by the provisions of section 164 of the Children Act, 2001.

5. Upon the making of the adoption order, The Registrar General do make an entry recording the adoption and the date of birth of the child as 30th March, 2011 in the Adopted Children Register as provided for by Section 170 of the Children Act, 2001.

6. The costs of this application be costs in the cause.”

The application was disposed of by way of oral testimony. On 9th April, 2014 the court did approve the appointment of **MS. I K** as the ‘Guardian *ad Litem*’.

Section 156 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 subject child was born on or about 30th March, 2011. He was about three (3) years old by February, 2014 when this application was filed and therefore was above the six week age limit for adoption prescribed by Law. Annexed to the application I have seen a certificate serial number 001268 declaring the child free for adoption. The certificate has been issued by the Little Angels Network which is a duly registered adoption society. Therefore I find that all the legal prerequisites for this adoption have been met and the application is properly before this court.

THE APPLICANTS

The applicants are a married couple both of who live and work in Mombasa County. The couple met in Mombasa in 1992 and began a friendship which culminated in their marriage on 20th December, 1997 at the Glory Tabernacle Church. Their marriage has not resulted in any biological children of their own but the couple have one child a daughter named **I A A** whom they adopted in May, 2007. That daughter is now aged 9 years.

As stated earlier both applicants hold stable jobs. The 1st applicant works as an Engineer with the Kenya Ports Authority whilst the 2nd applicant works as a Research Officer with the Kenya Maritime Authority. They both earn a comfortable living and are able to financially take care of and provide for two children. The couple live in their own home in Bamburi and in addition have two units for rental purposes. I note that each applicant has annexed their certificate of Good Conduct issued by the Kenya Police proving that they have no criminal record.

The report filed by the Adoption Agency indicates that both applicants were raised in stable homes and the expectation therefore is that they will provide the same for their children. They each maintain family ties with their parents and siblings who it is indicated have welcomed and support their decision to adopt a second child.

I did myself interview each applicant in chambers. Each confirmed that they fully understood the legal implications of an adoption order. Indeed the two are not strangers to the adoption process having earlier adopted a child in 2007. The couple it is clear are in a stable and committed marital union. They are both Christians. They have been unable to bear a child together hence the decision to adopt. I am persuaded that the applicants' only desire is to complete their family by providing a home to a child who otherwise may have none. I am satisfied that the two are suitable adoptive parents.

THE CHILD

The subject child is a boy-child whose given names are '*Maximiliano Bora*'. The child was born around March, 2011 but was found abandoned at Kibera Gatwekera in Nairobi. A good samaritan rescued the child and reported the matter at Langata police station. On 12th October, 2012 he was committed to the custody and care of the New Life Home by the Children's Court in Nairobi. It is here that the applicants met the child. They took him into their home in December, 2012 under a Fostering arrangement and have lived with him since then.

All the material before court indicates that the parents of this child are not known and cannot be traced. He was abandoned indicating that his birth mother was unable and/or unwilling to care for him. Since September, 2012 to date no person has come forward to claim the child. A report dated 25th April, 2013 from the OCS Kilimani police station confirms that efforts to trace the child's relatives have not borne fruit. As such there is no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances I do waive all requirements for consent to this adoption in line with section 159(1)(a) of the Children Act 2001.

THE APPLICATION

The applicants before court have applied to adopt the subject child. In all cases involving the welfare of children the court is obliged by virtue of section 4(a) of the Children Act to give priority to the **best interest** of the child. The subject child was abandoned by his birth mother. He was fortunate to be rescued and taken to a Children's Home where he faced an uncertain future. This adoption allows this child the opportunity to be raised in a loving stable home environment with a sibling and extended family who by all accounts have already accepted him. I have perused the Home Report prepared by the Children's Department as well as the report filed by the *Guardian ad litem*. Both indicate that the child has adapted well to his new family and is fully integrated. This was equally obvious to myself as I could see that the child views the applicants as his parents. In my view this adoption certainly does serve the best interests of this child. I therefore do allow this originating summons dated 18th March, 2014 in terms of prayers (2), (3), (4) and (5). No order on costs.

Dated and delivered in Mombasa this 24th day of July, 2014.

M. ODERO

JUDGE