



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 16 OF 2013

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

AND

IN THE MATTER OF ADOPTION OF BABY R R

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY R R BY G M M
J AND C N M THE APPLICANTS

JUDGMENT

The applicants **GM M J** (hereinafter referred to as the 1st Applicant) and **CNM** (hereinafter referred to as the 2nd Applicant) have filed in court the Originating Summons dated 10th September, 2013 seeking *inter alia* the following orders:

“1. THAT the consent of the biological parents of baby R R be and hereby dispensed with since the child was abandoned at an open field within Kibera area and the efforts by the authorities [to trace his parents] have not borne any fruits.

4. THAT the applicants Mr. M M J and Mrs. C N M be allowed to adopt the child and [he] be called A M M henceforth.

5. THAT the Registrar-General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register in respect of baby A M M.”

The application was heard by way of ‘*vive voce*’ evidence. On 21st January, 2013 the court approved the appointment of Ms. JCM as ‘*Guardian ad litem*’ in this matter.

Section 156 (1) of the Children Act 2001 provides:

“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 is estimated to have been born on or about 19th April, 2012. He was therefore about 1 ½ years old when this application was filed. Annexed to the application is the certificate dated 24th

April, 2013 bearing serial No. xxxx declaring the child Free for Adoption. This certificate has been issued by The Little Angels Network which is a registered adoption society in Kenya. I find that the prerequisites for adoption have been met and that this application is properly before the court.

THE APPLICANTS

The applicants are a married couple who live in Mtwapa – Kilifi County. They got married to each other on 26th July, 1991 at the Registrar’s Office in Nairobi. During their 23 years of marriage the couple have not been blessed with any child due to medical complications on the part of the 2nd applicant. They now desire to adopt a child.

I have carefully perused the Social Enquiry Report prepared by The Little Angels Network. Both applicants are employed and earn good salaries. The 1st applicant worked with the Kenya Airforce until his retirement last year whilst the 2nd applicant still works at the Sarova Whitesands Hotel in Mombasa. They currently reside in a rented premises in Mtwapa but have plans to build their own home. Each of the applicants has availed a certificate of Good Conduct from the Kenya Police indicating that neither has a criminal record. The report indicates that both applicants were raised in Kilifi County and both retain close ties with their immediate family. It is indicated that family members on both sides are supportive of their intention to adopt a child. The two are committed born-again Christians and attend Fellowship in Mtwapa Town. Both applicants testified before me. They each assured the court that they fully comprehended the legal obligations which would arise from an adoption order. From the material availed I find that the applicants are a couple in a committed marriage who due to failure to conceive a child naturally now desire to adopt a child in order to complete their family. I am satisfied that they both are suitable to adopt a child.

THE CHILD

The subject child whose given names are ‘R R’ was abandoned at the age of approximately two weeks in an open field in the Kibera area of Nairobi. A good samaritan known as ‘S N’ rescued the child and reported the matter at Kilimani police station. It is reported that at the time of his rescue the child “*looked malnourished and had an old man’s look.*” The child was then handed over to the New Life Home Trust in Kilimani for care and custody. Article 14 (4) of the Constitution of Kenya provides as follows:

“A child found in Kenya who is, or appears to be less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.”

I therefore by virtue of this provision declare the subject child to be a Kenyan citizen by birth.

The child was abandoned shortly after birth. Records indicate that he may have been delivered prematurely. To-date no person has come forward to claim the child. A letter from the officer in charge at the Children Desk at Kilimani police station indicates that police efforts to trace the mother of the child have been fruitless. As such this child was indeed free for adoption. Given that there exists no known person from whom consent for this adoption can be sought and/or obtained I do hereby waive all requirements for consent in line with section 159 of the Children Act.

THE APPLICATION

By section 4(a) of the Children Act courts are obliged to give priority to the **best interest** of the child. Here is a child who was abandoned shortly after birth. It is clear that his biological mother was unable and/or unwilling to take care of him. I have carefully perused the report of the *Guardian ad litem* as well as the Home Report prepared by the Children Officer in Kilifi County. The child has been living with the applicants since he was about four months old. He knows no other parents. He was found to have adapted well to the applicants and has bonded with them. This was obvious even to me as I observed the family in my chambers. Through this adoption this child now has the opportunity to be raised in a normal loving

home environment. The home was visited and was found to be spacious and well equipped suitable for raising a young child. I am satisfied that this adoption does serve the best interests of the child and I do allow the same. Finally I do allow the Originating Summons dated 10th September, 2013 in terms of prayers (3), (4) and (5). No orders on costs.

Dated and Delivered in Mombasa this 19th day of November, 2014.

M. ODERO

JUDGE