



REPUBLIC OF KENYA

High Court at Mombasa

Adoption Cause 8 of 2012

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

AND

**IN THE MATTER OF: APPLICATION FOR ORDERS OF ADOPTION OF THE MINOR BABY
G.Z**

BETWEEN

D.M.M

L.M.M.....APPLICANTS

JUDGMENT

Before court is the application to adopt a child made by **D.M.M** (hereinafter referred to as the “*1st Applicant*”) and **L.M.M** (hereinafter referred to as the “*2nd Applicant*”). The child the subject matter of this application is known as ‘**G.Z**’ and is a female child of African descent, who was born in December, 2010.

The prerequisites for adoption are contained in section 156(1) of the Children’s Act which provides:

“No arrangements shall be commenced for the adoption of a child unless the child is at least six (6) weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”

The subject child is now aged about 2 ½ years thus is well above the age of six (6) weeks. The **L.A.N** a registered adoption society have issued their certificate dated 19th August, 2011 S/No.[particulars withheld] declaring the said child free for adoption. Therefore I find that all the legal prerequisites for adoption have been met. One **B.M** a resident of T[...] Estate in Mombasa was approved by the court as ‘*guardian ad litem*’.

The applicants are a couple who got married to each other on 4th April, 1998 at the Mombasa Pentecostal Church. The couple have not been blessed with their own biological child due to a medical condition but are desirous of adopting a child. They both testified before me. They both assured the court that the decision to adopt is one they have made jointly and have informed their extended family of their intention. The extended family are supportive of their plans and have welcomed their decision to adopt the child.

The applicants have annexed copies of their identity cards and each has produced a certificate of Good Conduct from the Kenya Police. The applicants are both business people in different fields. The 1st applicant is engaged in a family business whilst the 2nd applicant is engaged in the Beauty Product business. Each of them realizes approximately Kshs. 100,000/= from this work thus they are a financially stable couple and would have no problem providing for the needs of a growing child. A children officer did visit the couple's home in T[.....] Estate in Mombasa. Her report indicates that the applicants occupy a spacious and well furnished apartment with running water and electricity. The compound is secure and was found to be conducive to the upbringing of a child. I was able to observe the applicants as they testified before me and I did form the impression that they had a genuine love for the child and were anxious to provide her with a good home.

The child in question was abandoned on 3rd February, 2011 at the age of two (2) months into the hands of a good Samaritan at the Kisumu Bus Park. The good Samaritan reported the incident at Kisumu central police station and the child was later committed by the court into the care and protection of New Life Home. It is from this home that the applicants met and identified the child. The child was released to the applicants in March, 2011 under a Fostering Agreement. I was able to observe the child in court. She was a healthy happy child and had obviously bonded well with the applicants. The Children's Officer did confirm in her report filed on 16th November, 2012 that during her visit to the home she found the child was playful and already considered the applicants as her parents. Both the Children's Department and the Adoption Agency recommended this adoption.

Section 4(2) of the Children Act obliges a court to give priority to the best interest of the child in determining whether or not to allow an application for adoption. This is a child who was abandoned by her mother and left in the hands of a stranger. She faces an uncertain future in homes or other similar institutions. It certainly serves the child's best interests to be allowed to grow up in a loving family environment like other children. It is therefore to the benefit and well-being of this child to allow this application.

The child's mother was not traced by police despite their best efforts. In their letter dated 4th August, 2011 the police indicate that all efforts to trace the child's mother have borne no fruit and that no person has come forward to claim her. As such no person exists from whom consent can be sought and/or obtained. I therefore waive the requirement for consents in line with section 158(1) of the Children Act. Finally, I do hereby allow this application for adoption of Baby G.Z, now to be called **T.M** and I further direct that the Registrar do make the necessary entry in the Adoption Register.

Dated and delivered in Mombasa this 18th day of February, 2013.

M. ODERO

JUDGE

In the presence of:

Mr. Muchiru h/b for Applicants

Court Clerk Mutisya