



REPUBLIC OF KENYA

High Court at Mombasa

Adoption Cause 3 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 K.L.H

BETWEEN

J.O.M & P.A.M.....APPLICANTS

JUDGMENT

By way of this Amended Originating Summons the two applicants namely **J.O.M** (hereinafter referred to as the “1st Applicant” and **P.A.M** (hereinafter referred to as the “2nd Applicant”) have prayed:

“THAT J.O.M and P.A.M be authorized to adopt K.L.H formerly known as [particulars withheld] – the minor child.”

The application to adopt was heard by way of *vive voce* evidence. The court approved the appointment of **C.A.O** as the ‘*guardian ad litem*’ for the child.

The law regarding adoption of children is contained in the **Children’s Act 2001**. Section 156(1) of the said Act provides that:

“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 – the subject matter of this adoption was born in October, 2010. At the time when this application was made she was about 1 ½ years old. The said child has been declared free for Adoption by the [particulars withheld] vide their certificate serial number 735 dated 28th September, 2011. As such I find that all the prerequisite for adoption as set out in section 156(1) of the Children’s Act have been fully complied with.

The applicants are a couple who married in September, 1988. They both reside and work in Mombasa. The 1st Applicant is a lawyer in private practice whilst the 2nd Applicant is a postal officer. The couple have two adult sons namely:

- P.W.M born in 1989 who is currently pursuing a law degree at the University of Nairobi.
- L.A.M born in 1992 who has completed his secondary education.

The applicants told this court that having adult sons they both desired to have a daughter and made the decision to adopt in order to give a needy girl a home. They confirmed that this was a joint decision which they have communicated to their extended family all of whom are supportive of their decision to adopt a child.

The child in question **K.L.H** was found abandoned at the age of about one month at Nyanza Guest House in Kisii. The proprietors of the Guest House handed over the baby to Central police station in Kisii and the police in turn referred the matter to the Children's Department on 15th November, 2010. The child was eventually placed at the New Life Home in Kisumu for care and protection and was thereafter transferred to the New Life Home in Nairobi where the applicants met her.

This court has had the benefit of a report prepared by the Adoption Society as well as a home report prepared by the Children's Department. Both recommend the adoption. I have myself carefully perused both reports. I note that the applicants are both mature professionals in stable jobs and both earn a steady income. Aside from their jobs the applicants run a hotel and taxi business from which they derive extra income. They are a Christian couple and both attend the Seventh Day church in [particulars withheld] where the 2nd applicant is a choir member. The couple in my view are financially stable and struck me as honest in their desire to adopt this child and provide her with a good home.

The applicants have been married to each other for over 20 years and having raised and educated two sons cannot be said to be strangers to child rearing.

The Children's officer who visited their home indicates in her report that the home is in a secure neighbourhood and is conducive to raising the child. The couples two sons have both given their written consent to the adoption. Indeed one of the sons P.W.M did testify before the court and stated that both he and his brother are ready to welcome and embrace the child as their younger sister. I note that the child has lived in the applicants home under a fostering arrangement from September, 2011 a period of over one year. I was able to observe the child in my chambers. She was a happy, healthy and boisterous toddler who has clearly bonded well with her prospective family. All in all this court did not observe any factor that would raise any alarm regarding the child or the applicants.

Section 4(2) of the Children Act provides as follows:

“In all actions concerning children whether under taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration. [my emphasis].

The child in question was abandoned at the age of one month. To-date her parents remain unknown. Nobody has to-date come forward to claim the child and police in Kisii have been unable to trace the mother. Given this scenario the child faced a future of being raised in a Children's Home. It is certainly in her best interests to rather be raised in a loving home environment with a family like most other children. In view of the fact that this child was abandoned shortly after birth no consent can be sought from any known person. I therefore dispense with the requirement for consent in terms of section 159(1) (a) of the Children Act.

Finally, I do hereby allow this application by the applicants to adopt this child **K.L.H** and I further direct that the Registrar make the relevant entry in the Adoption Register.

Dated and delivered in Mombasa this 11th day of February, 2013.

M. ODERO
JUDGE

In the presence of:

Mr. Adhoch h/b Ms. Okumu for the Applicants.