



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 2 OF 2011

IN THE MATTER OF BABY F.N [INFANT]

AND

1. J.W.K.....APPLICANT
2. S.M.K.....APPLICANT

JUDGMENT

Before court is the application jointly made by **J. W.K** (*hereinafter referred to as the 1st Applicant*) and **S. M.K** (*hereinafter referred to as the 2nd Applicant*) seeking to adopt the child known as **F.N** (*hereinafter referred to as the child*).

The applicants are a married couple as per the marriage certificate serial No. [*Particulars withheld*]. Both reside in Mombasa and during the years of marriage they have been blessed with two biological children namely

1. N. K – 11 years
2. T.K – 9 years.

The child who was born on or about 18th June 2008 was abandoned shortly after birth in the M area of Mombasa. Upon being rescued by good Samaritans the matter was reported to police vide occurrence Book number 3 of 18/6/2008 at changamwe police station. The child was then escorted to Port-Reitz Hospital where he was examined and treated for a cut on his leg. Thereafter, the child was presented before the Tononoka Children's Court where he was committed into the care and custody of the New life Home. He remained at the home until 16/2/209 when he was placed into the custody of the applicants under a fostering relationship. This court did on

8/4/2011 approve one MS MW as the ‘guardian ad litem’ for the child.

The prerequisites for Adoptions in Kenya are to be founding the Children Act of 2001. S. 156(1) of said Act provides

“156 (1) 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”

The child in question was born in June 2008. He was therefore roughly 2½ years old, well above the six week age limit provided for by the Act by February 2011 when this cause was filed in court. The Little Angels Network, which is a registered Adoption Agency, has provided their Certificate Serial [.....] dated 12th August 2009 declaring the child free for Adoption. As such I am satisfied that all the legal prerequisites for Adoption have been compiled with.

The applicants both gave vive voce evidence in this cause. As stated earlier they are in a stable marriage of 14 years standing and have two biological children thus they are not strangers to child care and rearing. The couple told the court that it has always been their desire to adopt a child in order to provide an abandoned child with a home.

I have carefully perused the various report prepared by the Adoption Agency, the Children department and the guardian *ad litem*. All the reports reveal that the applicants are committed Christians and their decision to adopt this child was made jointly out of Christian compassion and charity. The decision has been communicated to and welcomed by their respective extended families. Both applicants assured the court that they fully comprehend the legal obligations arising out of an adoption and I have no doubt of their desire and intention to raise this child as their very own.

The 1st applicant being a housewife will have ample time to see to the proper upbringing of the child. The 2nd applicant works as a shipbroker where he earns sufficient money to cater for the needs of his family. He has attached his bank statement as proof of this. In addition both applicants have annexed certificates of good conduct issued to themselves by the Kenya police proving that they are of good character and neither has a criminal record.

In all decisions relating to children the law provides that the best interest

of the child must be the paramount consideration. S. 4(2) of the Children Act provides

“4(2) in all actions concerning children, whether undertaken by public or private social welfare, institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”.

This is a child who was abandoned shortly after birth. According to the latest police report no person has to date come up to claim him. His parents and relatives are unknown. The only future such a child faces would be growing up in a childrens home. With due respect to the efforts made by such homes countrywide such an institutionalized environment can never be a substitute for being raised in the bosom of a loving family. The home visits revealed that the applicants live in a spacious well appointed home. There is adequate space for the family.

The child has lived in the applicant’s home as a cherished member of the family from February 2009 under a fostering arrangement. The fact that he has bonded well with all the family members was clear and evident to see. The applicants’ two biological children clearly dote on the child and already refer to him as their “brother”.

I was able to observe the child in my chambers. I saw a healthy, happy inquisitive 2½ year old. I have no doubt that he has been well cared for by the applicants. To remove him would only cause unnecessary trauma. I am convinced that I serve the best interests of this child to allow this petition for adoption.

As stated earlier, the parents of the child cannot be traced and no relative has come forward to claim him. As such no consents are necessary for this adoption. I do therefore waive all requirements for consent provided for by section 154(a) of the children Act as provided by S. 159(1) (a) of the same Act.

Finally I do allow this petition for Adoption dated 31/12/2010 in terms of prayers (b) and (d) thereof. No orders as to costs.

Dated and delivered in Mombasa this 1st day of September 2011.

M. ODERO
JUDGE

In the presence of

Mr. Lewa holding brief for Mulwa
Mutisya – Court clerk.

M. ODERO
JUDGE