



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 16 OF 2010

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

(CAP 586 LAWS OF KENYA)

AND

IN THE MATTER OF: AN APPLICATION BY M.M

AND

W.M FOR AN ORDER OF ADOPTION

AND

IN THE MATTER OF: ADOPTION OF H.I

AND

M.M..... 1ST APPLICANT

W.M.....2ND APPLICANT

JUDGEMENT

This is the Originating Summons dated 16th November 2010 in which **M.M** (hereinafter referred to as the 1st Applicant) and **W.M** (hereinafter referred to as the 2nd Applicant) seek inter alia the following orders:

- “(b) THAT the requirements of section 158(4) (a) of the Children’s Act be waived as provided for by S. 159(1) (a) of the Act.**
- (c) THAT the applicant be authorized to adopt H.I, the said child to be known as C.M after the adoption.**
- (d) THAT the Registrar-General be directed to make in the adopted Children’s Register, an entry to the effect that C.M is so adopted as per the particulars of the adopted child”**

On 6th April 2011 one **A.W.M** was approved as “*guardian ad litem*”. The Applicants gave vive voce evidence before this court on 7th September 2011.

The law guiding adoptions in Kenya is to be found in the Children Act 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”.

In this case the date of birth of the child is unknown, but he was found abandoned in March 2008 . At that time he was about 2 weeks old. This application for adoption was filed in court on 22nd November 2010. By that time the child was approximately 2½ years old well above the six week age limit provided by S. 156(1). The Child Welfare Society of Kenya which is a registered Adoption Agency has declared the child free for Adoption vides their Certificate dated 2nd July 2010. As such I find that this adoption cause having met the legal prerequisites is properly before this court.

The Applicants are a married couple. They first got married under Customary Law in 1993. They later formalized their marriage through a ceremony conducted at the Registrar’s office in November 2009. This is evidenced by the annexed Certificate of Marriage. The couple has tried to have their own children but due to a set of misfortunes the three children born to them all died in infancy. They thereafter decided to adopt this child. The 1st Applicant is in paid employment whilst the 2nd Applicant carries on business from their home in Mombasa.

The Applicants both gave evidence before me. I was able to observe their demeanour as they testified. I am convinced that they are both genuine in their desire to adopt this child and provide him with a home. Both Applicants assured the court that the decision to adopt was jointly made in consultation with one another. They have explained the decision to their extended family who have welcomed the same. Both assured court that they fully understood and appreciated the legal and social obligations which would arise from an order of adoption. The couple is legally married and are both followers of the Christian faith. There is nothing to raise any doubt about their suitability as adoptive parents.

The child herein was found abandoned in Nairobi in March 2008. The matter was reported to police. The child was then taken to Imani Children’s Home for care and protection. Later in September 2008 the child was committed by the Nairobi Children’s Court to the same institution. It is at this home that the Applicants met the child. The child was in August 2009 placed in the custody and care of the Applicants by way of a fostering arrangement and has lived with them ever since that time.

The court has seen and carefully perused the report filed by the Adoption Agency recommending this adoption. I have also perused the Home Report prepared by the Children’s Department dated 28th June 2010. The children’s officer did pay a visit to the home of the Applicants. It was found to be a safe secure environment suitable for raising a child. The child was found to have bonded well with both Applicants. This was also evident to the court. The child was in court and I saw a happy well-nourished 3 year old child. I have no doubt that this child has been well cared for.

In every decision concerning the placement of a child, courts must be guided by S. 4(1) of the Children Act which provides:

(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 interests of the child shall be a primary consideration”

This is a child who was abandoned shortly after birth. No person has to date come to claim him. The parents of the child are unknown. The Police Report dated 24th June 2009 from a Police Station indicates that no parent of this child has been traced. The only future this child faced was to be raised in a children’s home. With all the best will in the world these homes remain institutions and may not be able to provide the child with a loving home environment. The Applicants are offering this child an opportunity to be raised in a family in a safe home environment. This certainly advances the best interests of any child. For the abovementioned reasons I do hereby allow this application for adoption.

In view of the fact that the child’s parents and/or guardians are unknown and have not made any effort to claim him I find that there exists no person from whom consent for this adoption can be sought. As such I do hereby waive the requirements for consents provided by S. 158(4) (a) of the Children Act. Finally I do allow this application in terms of prayers (b), (c) and (d) thereof.

Orders to issue.

Dated and Delivered in Mombasa this 18th day of October 2011.

M. ODERO
JUDGE

In the presence of:

Mr. Kirui holding brief for Mr. Were