



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 18 OF 2010

IN THE MATTER OF: CHILDREN'S ACT NO. 8 OF 2011

AND

IN THE MATTER OF: AN APPLICATION BY G.A.O AND C.O FOR AN ORDER OF ADOPTION

IN THE MATTER OF: ADOPTION OF T.A ALIAS A.A ALIAS (THE CHILD)

AND

G.A.O.....1ST APPLICANT

C.O.....2ND APPLICANT

JUDGEMENT

Before court is the Application for Adoption brought by way of Originating Summons by **G.A.O** (hereinafter referred to as the 1st Applicant) and **C.O** (hereinafter referred to as the 2nd Applicant) seeking the following orders:

“(a) **THAT** the requirements of Section 158(3) (a), 158(4) (a) of the Children Act be waived as provided for by Section 159(1) (a) of the Act.

(b) **THAT** the applicants be authorized to adopt **T.A** alias **A.A** the said child to be known as **F.A.O** after adoption.

(c) **THAT** the Registrar General be directed to make in the adoption childrens register, an entry to the effect that **F.A.O** is so adopted as per the particulars of the adopted child”.

The application was supported by the statement in support filed on 26th November 2010 sworn by both Applicants. The court did on 25th March 2011 approve the appointment of one **G.C.O** as the ‘*guardian ad litem*’ in this matter.

The application for adoption proceeded by way of Vive Voce evidence on 13th May 2011 when

both Applicants gave evidence under oath. The Applicants are a couple who have been married since the year 1995 under customary law. They formalized their union in July 2006 in Mombasa as evidenced by the annexed copy of their marriage certificate serial No. 515873. The couple have two other children:

- **F.N** - 19 years (who also gave evidence in court)
- **F.H.O**- 4 years old (also adopted)

The child whom the couple seek to adopt is named T.A alias A.A. A letter from the District Childrens Officer dated July 2008 indicates that the child who was born in 2008 was found abandoned in Nairobi in March 2008. He was collected by a good Samaritan and taken to the Police Station. The child was thereafter taken to Gertrude Garden Childrens Hospital in Nairobi for a medical examination. He was thereafter committed to the New Life Trust Home in Nairobi as a child in need of care and protection by way of a court order.

The law covering Adoption in Kenya is 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”

This child was said to have been born in 2008. A Certificate of Birth gives his date of birth as January 2008. This Adoption Cause was filed in court in November 2010 when the child was about two years old. Thus the child was well over the six week age limit provided by S. 156(1) of the Children Act. Likewise the Little Angels Network which is a registered Adoption Society in Kenya have issued their certificate declaring the child free for adoption. I am therefore satisfied that all the legal prerequisites for adoption have been met and I find that this adoption cause is properly before the court.

Both Applicants gave oral evidence before me and stated that they are desirous of adopting the child herein. The couple is in a legal statutory marriage and has lived as man and wife since 1995 a period of about 15 years. They have both told the court that the decision to adopt was a joint decision on their part and each has assured me that they fully understood all the legal and social consequences of an order of adoption. Both are ready to accord the child all the rights due to a biological child.

The Applicants have two other children in the family and thus are not new to parenting. I have carefully perused the report prepared by the Adoption Agency which placed the child with the Applicants as foster parents on 5th October 2009 which report indicates that the couple was assessed to be fit adoptive parents. Both Applicants are in stable paid employment. The 1st Applicant is a security officer whilst the 2nd Applicant works as a clerical officer. A home report prepared by the Children’s Department and filed in court on 18th July 2011 indicates that the couple lives in their own spacious and well appointed residence in Mombasa. The home has adequate space and provision for the new addition to the family.

I was able to observe the demeanour of the Applicants as they testified before me. They struck me as honest, hardworking, committed couple with a deep love for children, who desired to provide a good home for the child. Their eldest child F.N also gave evidence in support of the Adoption. She told the court that the family has already fallen in love with and bonded with the child who has been living in their home for the past 3 years. She assured the court that she welcomes the child as her younger brother.

In any case of adoption the primary consideration must be the best interest of the child. The Children Act at S. 4(2) provides that:

“(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” [own emphasis]

This is a child who was abandoned shortly after birth. He faced a future in a childrens home. The Applicants are offering the child the opportunity to be raised in a family. I did see the child in court. He was a health, happy and boisterous 3 year old boy. His affection for the Applicants was clear to see. I have no doubt that he has bonded well with the family. I am convinced that the best interests of this child will be advanced by allowing this application for adoption.

The Childs parents are unknown as he was found having been abandoned in a field. A report from the O.C.S. at a Police Station dated 30th January 2009 indicates that no person(s) has come forward to claim the child. As such there exists no person from whom consents can be required. I therefore waive all requirements for consent as provided by S. 159(1) (a) of the Children Act. Finally I do hereby allow this application for adoption in terms of prayers (a), (b) and (c) thereof. No orders as to costs.

Dated and Delivered in Mombasa this 11th day of November 2011.

M. ODERO
JUDGE

In the presence of:
Ms. Kadzo for Applicants