



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 17 OF 2010

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

AND

IN THE MATTER OF: AN APPLICATION BY P.K.O AND E.N.K FOR AN ORDER OF ADOPTION

IN THE MATTER OF: ADOPTION OF D.A.J ALIAS BABY W
(THE CHILD)

AND

P.K.O 1ST APPLICANT

E.N.K 2ND APPLICANT

JUDGEMENT

Before court is the Application for Adoption brought by way of Originating Summons filed in court on 26th November 2010. The two Applicants **P.K.O** (hereinafter referred to as the 1st Applicant) and **E.N.K** (hereinafter referred to as the 2nd Applicant) are seeking to adopt **D.A.J** alias **BABY W** (hereinafter referred to 'as the child'). In their application the Applicants make the following prayers –

“(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 **D.A.J** alias **BABY W**, the said child to be known as **D.B.K** after the adoption.

(c) **THAT** the Registrar General be directed to make in the adopted children's register, an entry to the effect that **D.B.K** is so adopted as per the particulars of the adopted child”

The application was supported by the affidavit sworn by both Applicants on 15th November 2010. The application was disposed of by way of a Vive Voce hearing on 25th March 2011. The court did approve the appointment of **W.M.M** as a '*guardian ad litem*' in this matter. The law relating to Adoptions in

Kenya is to be found in the Children Act 2001. Section 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 on 21st October 2003. This Adoption Cause was filed in court on 26th November 2010 by which time the child was aged approximately 7 years well above the six week age limit provided for by S. 156(1). The Little Angels Network which is a registered Adoption agency in Kenya has issued their certificate serial No. [.....] dated 20th January 2010 declaring the child free for adoption. As such I find that all the legal prerequisites for adoption have been met and I further find that this adoption cause is properly before the court.

The Applicants both of whom gave evidence in court are a couple who have been married since the year 1996. They solemnized their union by way of a civil ceremony conducted at the Registrars Office in October 1996. Their marriage however has not been blessed by any children. No doubt this is the reason for this present application. The couple reside in Lamu District where both are self-employed.

The child is a boy aged 7 years. He was abandoned at birth and was found by a good Samaritan in Thika. The matter was reported at the Police Station and the child was taken to the Hospital for medical examination. On 28th November 2003 the Resident Magistrate’s Court at Thika committed the child to a Home. The home later in the year 2004 released the child to the Applicants on a fostering arrangement. He has from that time lived with the couple at their home.

It is clear that the Applicants are upright law-abiding citizens as proved by their annexed Certificates of Good Conduct issued by the Kenya Police. They both confirmed to me that the decision to adopt a child was made jointly due to their inability to bear children of their own. More importantly each confirms having fully understood the legal and social obligations arising from adoption. I have perused the report prepared by the Adoption Agency which recommends the Applicants as adoptive parents to this child. I have similarly perused the report dated 11th July 2011 prepared by the Childrens Department. A home visit was made by the childrens officer. She reported that the couple lives in a spacious three-bedroomed house on a farm which is an ideal environment in which to raise a child. The couple live with the 1st applicants elderly mother who is reported to have a great affection for the child and is receptive to her new grandchild. Both applicants are in income-generating gainful self employment. I have no doubt that between them they make sufficient income to cater for all the needs of the child. The Childrens Department also recommends the adoption of this child by the Applicants.

The court in making its decision must be guided by the ***‘best interests’*** of the child. S. 4(2) of the Childrens Act provides:

“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”. [my own emphasis]

The child herein was abandoned at birth and was found with the cord still attached. Having been rescued by a good Samaritan and taken to the New Life Home he faced a satisfactory existence in the said home. The Applicants have come forward and now offer to provide for the child an ideal upbringing in a home environment. The child has lived with the couple since 2004 and all his needs including education are now being met within a family setting. I did observe the child in court. He was a healthy, happy, well adjusted 7 year old with a clear affection for the Applicants whom he considers his parents. I have no doubt that the best interests of the child are best advanced by allowing this application for adoption.

The parents of the child remain unknown to date. A report dated 9th August 2005 from the O.C.S. at a Police Station confirms that no person(s) has come forward to claim the child. In the circumstances there is no person from whom consent need to be obtained for the adoption. I therefore waive all

requirements for consents in terms of 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). No order 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