



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

AND

IN THE MATTER OF: A.P alias BABY C.O

IN THE MATTER OF: APPLICATION FOR ORDERS OF ADOPTION

OF THE MINOR A.P alias BABY C.O

BY E.K.N AND E.K.N

BETWEEN

E.K.N AND E.K.N.....APPLICANTS

JUDGMENT

E.K.N and E.K.J (hereinafter referred to as “applicants”) have jointly applied through an Originating Summons dated 24th February 2011, (hereinafter referred to as “application”) for prayers inter alia:-

- (1) That J.W.M and E.G.M be appointed Guardians ad Litem in this case.
- (2) That, these applicants be authorized to adopt **A.P. alias Baby C.O** the minor child.
- (3) That the name of the said minor child be changed to read **A.M.K.**
- (4) The costs of the application be in the cause.

In support of their application, the applicants aver, (through the statement in support) that they are adults of sound mind and are married. That, they are both of Kenyan nationality and of African race. That they do not have a child of their own. They further depone that, they are both business persons, and financially stable. That they have strong Christian belief, faith and strong religion. In relation, to the Minor child they told the court that, the subject minor child was born on 13th August 2006 and is now four (4) years and six months old. That they have lived with the Minor since the year 2008. That the Minor Child goes to school at (*particulars withheld*) (a Private School). That the aim to adopt the Minor child is founded on their desire to give the Minor Child parental love, care and affection. They have sworn an affidavit and annexed several documents thereto in support of their application.

The Law in support of Adoption is found under section **156 to 183** of the Children Act. Section 156 to 159 thereof sets down the prerequisites for Adoption as follows:-

- i. That the child to be adopted should be at least six weeks old.
- ii. That the child has been declared free for adoption by a Registered Adoption Society.
- iii. That the child concerned has been in continuous care and control of the Applicant within the Republic of Kenya for a continuous period of three (3) consecutive Months preceding the filing of the application.
- iv. That both the child and the applicants as the case may be, be evaluated and assessed by a registered adoption Society in Kenya.
- v. That the applicants should be at least 21 years old than the child and not more than sixty five (65) years old.

In addition, the applicant(s) must be of:-

- i. Sound mind
- ii. Not charged and convicted for any offence set out in the Third Schedule to the Act
- iii. Not a homosexual
- iv. Joint applicants who are not married to each other
- v. Sole foreign Applicant

The Act further requires that consent be given which should be in writing in respect of a child who has a parent or guardian (or as per other cases listed under section 158(4) of the Act). However, the court may dispense with consent as per section 159 of the Act, which includes inter alia children who have been abandoned, neglected, ill-treated. Abandonment may be presumed after six months lapse, and the biological parent cannot be traced.

In addition, section 160 of the Children Act requires a **Guardian Ad Litem** be appointed pending the hearing and determination of the Adoption application and sets down the duties of a Guardian Ad Litem. The check list of the court before making an Adoption order are found under section 163 of the children Act. These requirements are:-

- (i) To make sure all consents required have been given and/or dispensed with.
- (ii) To ensure that the Order, if made will serve the BEST INTEREST OF THE CHILD.

The documents annexed to the application herein are:-

- (i) Identity Card of J.M.W showing he was born 21st February, 1964; therefore he is over 21 years old. He is at least 49 years.
- (ii) Identity Card of E.G.M born on 16th September, 1967, again over 21 years old and about 44 years.
- (iii) A certificate of understanding of the legal effect of an adoption order, signed by the applicants.

There is a report declaring a child free for adoption pursuant to section 156(1) of the children Act prepared by the New Life Home Trust – Mombasa. It gives a history on how the child minor herein was abandoned at Coast Provincial General Hospital after birth and later handed over to the Mombasa District Children Officer. A report of abandonment was made to Central Police station Mombasa on 6th September, 2009 vide OB, entry No. 36 of 13th August 2006. On 26th September, 2009 the child was committed to legal custody of new Life Home Trust for three years through a court order issued at Tononoka Children’s Court. Eventually the child was discharged into the care of the applicants on the 20th October 2008. That todate, there is no information as to the biological family of the minor child and no one has claimed the child minor as per the police letter dated 15th May, 2007.

As a result, the care committee of Little Angels Network sat and declared the minor child as free for adoption issuing a certificate No. [...] in accordance with the Provisions of Section 156(1) of the Children Act. The relevant certificates have been annexed to the report and I find they support the contents of the report and they satisfy the requirements of Law, as outlined herein.

Finally, the court ordered that the Children Department provide a home report and the same was brought to court dated 27th October 2011. The Department recommended the adoption be approved. I also physically heard evidence orally and examined the applicants and saw the child.

I find that the child herein was born on 13th August 2006, at the time he was given to the applicants on 20th October 2008, he was over 2 years, well above six weeks age limit and the time the Adoption application was made on 24th February 2011. All reports indicate the applicants are financially fit to take care of the child and have been married for 17 years without a child of their own, their only child having died at birth, hence, the deep desire to adopt the minor child herein. They are both Africans, adult and Christians. Their extended family has no objection to the proposed adoption and the Guardians Ad Litem too are supportive of the application.

Therefore, taking into account the child was abandoned, and has now found a home, I believe it’s in the interest of the child to allow the application. I uphold the Provisions of Section 4(2) of the Children Act, **“THE BEST INTEREST OF THE CHILD SHALL BE A PRIMARY CONSIDERATION”** The child herein shall find a family home to grow in, unlike if left in a street or a Children’s Home which may be strained financially, in terms of infrastructure, due to overwhelming numbers. The child has already settled in the applicant’s home. No one is claiming the child, hence the dispensation with requirement of consent. I therefore allow the application, the Originating Summons dated 24th February 2011 in terms of prayers (b) and (c) thereof.

The judgment is dated and delivered in Mombasa this 14th day of November 2011.

GRACE L. NZIOKA
JUDGE
11/11/2011

In the presence of Mrs. Kipsang for the applicants

Buoro - court clerk.

GRACE L. NZIOKA

JUDGE
08/12/2011