



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Adoption Cause 139 of 2007

IN THE MATTER OF: P.K.J (INFANT)
AND
IN THE MATTER OF: THE CHILDREN ACT, NO. 8 OF 2001
J.S.J &
J.K.J.:.....:APPLICANTS
RULING

The proceedings herein relate to the adoption of an infant P. K.J. A perusal of the record reveals that the intended adoptive father is a biological uncle of the infant. Consent of the biological parents of the minor are on record and their attendance was dispensed with after being present during the appointment of the guardian ad litem on 31/10/2008.

When the parties came to court, for final orders on 6/11/2009 the court, learned that the adoption is an in house arrangement. The child has been with the intended adoptive parents since the age of 6 months. The intending adoptive parents are comfortable with the adoption.

The officer from the child welfare society filed a report recommending that it were better if the child were to be brought up by the biological parents and siblings as opposed to it being adopted. Whereas the officer from the Director of the children's department stated that the intending adoptive parents are British, whereas the child is Kenyan and as such a problem exists as foreigners cannot adopt under the local law.

Counsel for the applicants submitted that, if the adoption does not go through, the child will be traumatized in that she is going to be plucked from the parents she has known to be her parents and then placed elsewhere even with biological parents. That the applicants are not within persons who are not entitled to adopt.

By reasons of the afore set out representations, the court adjourned the matter to another date to enable the guardian ad litem furnish an affidavit clarifying the following issues namely:-

- Citizenship of the child after adoption
- Information on the prospects of the child being raised by the biological parents as opposed to being raised by adoptive parents.
- Proof of the in house customary adoption such as the one proposed herein.

The guardian ad litem deponed an affidavit on 4th December 2009 and filed in court, on the 8th December 2009. The salient features of the same are as follows:-

- He understands his role as a guardian ad litem which is to safe guard the interests of the minor.
- That the minor has been under the continuous care and control of the intended adoptive parents since the age of 6 months and knows her biological parents as her uncle and aunt.
- That by reason of the above, it is in the best interest of the child to allow the adoption to proceed to finalization.
- That adoption is not a new phenomena in the adoptive fathers family as him and the biological father of the minor who are blood brothers enjoy the relationship of two other adopted brothers.
- That conversation with the biological parents reveals that the decision to give out the child for

adoption may without coercion and has received blessings from the wider family.

- That the minor will be traumatized if a reunion with the biological parents were to be ordered. The intending adoptive parents will also be traumatized as they have become attached to the child as their own.
 - That both biological and intended adoptive parents share the same ethnic, religion and cultural backgrounds and so the child stands to suffer nothing.
 - He has personal knowledge that in house adoption is widely practiced within the community and he also has personal knowledge that the development and well being of such children has been normal.
 - The biological parents have already given their written consent herein signing that they fully understand the consequences of adoption and have no objection to the adoption proceedings.
 - It is his stand that both applicants though British overseas citizens they are permanently resident in Kenya and have property in Kenya and are morally financially capable of bringing up the said child.
- Counsel on record also filed an affidavit deponed on the 14th day of December 2009 and filed the same date annexing a letter from the British High Commission to the effect that there will be no automatic British Citizenship to the applicants dependants.

When the content of both affidavits was brought to the attention of the officer from the child welfare society, and the children's department, they stated to the court, that they had no objection and left the matter to the discretion of the court.

Due consideration has been made by this court, of all the relevant circumstances surrounding this case, as gathered from a perusal of the record, and oral representations in court, and the court, proceeds to make the following findings.

1. There being no bad blood between the biological and adoptive parents, and by reason of them being close relatives in fact brothers, it means that the biological parents are not going to loose touch with the minor child. They will continue contributing towards its care, control and general welfare not as biological parents, but in their newly acquired legal capacity as the extended family. The court, has no doubt that in the event of anything going wrong, they will be in apposition to voice for or against it and take remedial steps.
 2. The court, has been assured that this is an in-house arrangement culturally accepted within the applicants community. Nothing has been stated to court, that this is a harmful practice. This court, has judicial notice from the discharge of its judicial duties that such a practice is not un common and its sole purpose is to protect the communitys' children formerly, practiced informally but currently has to be toned with legal flavour perhaps to protect the inheritance rights of the child to the adoptive parents properly.
 3. Issue of citizenship also arose, but the court, has been assured by the content of the letter from the British High Commission annexed to the counsels affidavit, that though there is no automatic citizenship to dependants', the letter did not rule out acquisition of such citizenship by dependants through the normal laid down procedures. As such the minor child will not be disadvantaged in any way.
 4. As deponed by the guardian Ad litem, the child will be traumatized if it were to be plucked from the parents she has known to another location and the change might affect her psychologically. It is therefore safer to allow the adoption go through and if the child learns about adoption while a grown up, she can have the right to choose to remain with the adoptive parents or rejoin her biological family.
- For the reasons given above the court, is satisfied that it will be in the best interests of the child to allow the adoption to go through. The court, therefore allows prayer 2 of the originating summons dated 27th day of August 2007 and filed the same date.

DATED, READ AND DELIVERED AT NAIROBI THIS 5TH DAY OF FEBRUARY 2010.

R.N. NAMBUYE

JUDGE