



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Adoption Cause 15 of 2009

IN THE MATTER OF: M.M

AND

IN THE MATTER OF: ADOPTION BY C.M

AND G.M

JUDGEMENT

The Applicants herein **C.M** and **G.M.M**, have jointly applied to this court for authority to adopt the child **M.M** (hereinafter referred to as **'the child'**). Their application proceeded by way of vive voce evidence.

The laws relating to adoption are to be found in S. 156 to S. 162 of the **CHILDREN ACT NO. 8 of 2001**. The prerequisites for adoption are specified in S. 156(1) of the said Act which 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 herein was born on 2nd June 2005. The present application for adoption was filed in court on 2nd June 2009. Therefore at the time this present application was brought the child was four (4) years old, way older than the six weeks provided for in S. 156(1). The Applicants did also avail to court a certificate from the **Child Welfare Society of Kenya**, which is a registered adoption society declaring the child Free for Adoption. As such I find that the pre-requisites as laid down by S. 156 (1) have all been met and that this matter is properly before the court.

The history of the child as provided in the Home Report prepared by both the Children’s Department and the Child Welfare Society of Kenya is that she was abandoned immediately after birth at Pumwani Maternity Hospital and was thereafter released to Chief Welfare

Society of Kenya Mombasa Branch.

The Applicants are a couple who got married on 25th September 2001 and both reside in Mombasa. Their union was not blessed with any children hence their desire to adopt this child. The 1st Applicant is in stable employment with a security firm and is able to provide the child with basic needs. The 2nd Applicant being a housewife will be available to mother the child and provide parenting on a full time basis. Both applicants profess the Christian faith. I did question both the applicants and ascertained from them that they were both fully aware of the legal implications of adoption. Each expressed their willingness to receive this child into their home and to accord her all rights due to a biological child.

As stated earlier I did receive and I have carefully perused the reports of the Guardian ad Litem, Adoption Society as well as the Children's Department. All these reports favour the adoption as the applicants were found to be suitable parents. Indeed the child has lived with the applicants since she was 1 year old. Their home in Migadini was visited and found to be ample thus suitable to raise a child. Both applicants stated that their extended families have warmly received the child into the family.

S. 158(4) provides that an application for adoption shall be accompanied by the written consents of the parents of the child or other immediate relatives. Since this child was abandoned in the hospital at birth neither her parents nor close relatives was known. As such no consents were attached. In view of these circumstances I do exercise my discretion under S. 159 of the Children Act and dispense with the requirement for such consents.

As stated earlier all reports were favourable. However the guiding principle in making any orders relating to the welfare of a child is found in S. 4(2) of the Children Act which provides

“(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law [my emphasis], administrative authorities or legislative bodies the best interest of the child shall be the primary consideration”

The question therefore is whether the **‘best interest’** of this child would be served by allowing this application for adoption. This is a child who having been abandoned at birth was taken into an institution. She now has an opportunity to be raised as part of a nuclear family with loving parents. In my view this is certainly more beneficial to her welfare than being raised in an institution. I note that the child has already lived with the Applicants in their home for the past three (3) years and she has no doubt forged a tight bond with them. I did observe the child in court and noted that she appeared happy, clean and well fed. I have no doubt that the Applicants would be good parents and I believe they are capable of providing this child with the nurturing care she needs for her material, emotional and spiritual growth. As such I do allow this present application and I do hereby make the following orders:-

- (1) THAT **C.M** and **G.M.M** are hereby authorized to jointly adopt the minor child **M.M**.
- (2) THAT the Registrar General is hereby directed to make the relevant entry in the Adopted Children Register.

Dated and Delivered at Mombasa this 20th day of May 2010.

M. ODERO

JUDGE

Read in open court in the presence of:-

Mr. Kirui for Applicants

M. ODERO

JUDGE

20/05/2010