

RULING

By an originating summons dated 24th January 2007, G. G. applied to be allowed to adopt P. C. The originating summons was amended on 22nd July 2007 whereupon one EWC was brought on board as one of the applicants seeking to jointly apply with GG to adopt PC. The applicants swore a joint affidavit in support of the originating summons.

From the affidavit and the statement of facts filed in support of the originating summons it is evident that GG and EWC got legally married at the Registrar's office Mombasa on 21st June 2006. The applicant, is a man aged 76 years whereas EWC is aged 32 years. The child, PC is aged 11 years. There are two reports from the Child Welfare Society of Kenya in which it is indicated that the child is not free for adoption. It is pointed out in those reports that the applicant is beyond the age of 65 years. It is also stated that the applicant and the child's mother, EWC have separated though legally married. EWC is said to be living with another man who has sired a baby girl called M with her. The applicant is accused of being a heavy smoker and drinker. For these reasons the Child Welfare Society of Kenya, a registered adoption society stated that it would not be to the best interest of the child to grant the adoption orders. Mr. Adhoch learned advocate for the applicant urged this court to disregard the two reports filed by the Child Welfare Society of Kenya. It is the learned advocate's view that the child has been with the applicant for a long time hence he regards him as his father. It is said that the applicant has acquired parental responsibility over the child.

I have considered the submissions of learned counsel. I have also perused the material placed before me and the reports filed by the Child Welfare Society of Kenya. Under S.158(1) (c) of the Children Act, 2001 a person aged above 65 years cannot be granted an adoption order unless the court is satisfied that there are special circumstances that justify the making of the adoption order. What is not disputed in this case is that the marriage between the applicant and EWC, the child's mother, has not been dissolved. However there is evidence that EWC is living with another man whereas the child lives with the applicant. EWC is alleged to have even had a child with another man outside wedlock. The applicant admits that he smokes and takes alcohol.

In my view these circumstances are not conducive for the promotion of the interest of the child. For this reason I find that GG is not qualified to adopt the child due to his advanced age and the fact that he is a heavy smoker and an alcoholic.

For the above reasons I decline to grant the adoption order and proceed to dismiss the originating summons with no order as to costs.

Dated and delivered at Mombasa this 4th day of March 2008.

J.K. SERGON

J U D G E