



REPUBLIC OF KENYA

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

Adoption Cause 156 of 2004

IN THE MATTER OFMKM (AN INFANT)

AND

IN THE MATTER OF.....THE CHILDREN ACT 2001

JUDGMENT

This Originating Summons dated 19th July 2004 was filed by Bowry & Company advocates on 28th July 2004 on behalf of two applicants DKM and YNKM, who are husband and wife. The orders sought in the Originating Summons are two, that is that –

1. JMO of Post Office Box Number [*particulars withheld*] Nairobi be appointed guardian ad litem to Moses Kanani Maraga the infant.
2. The applicants DKM and YNM be authorised to adopt the said infant.

The Originating Summons has grounds on its face and is supported by the affidavit of both applicants sworn on 8th April 2004. It is also supported by a statement signed by both applicants on 19th July 2004. On the 4th March 2005, the court appointed JOHN MOKAYA OMBEGI as the guardian ad litem and asked the Director of Children Services to compile the necessary home study report with respect to the proceedings.

Reports in these proceedings were filed and the matter came for hearing before me on 1/12/2006, on which date witnesses tendered oral evidence.

The first witness was JACINTA ACHIENG OMONDI who works for the Directorate of Childrens Services. Her evidence was that they visited the applicants at their home and also interviewed them. They compiled a report dated 31st October 2006, and which report was filed in court. From their assessment and findings, the child enjoyed a good family relationship with the applicants. The child had bonded well with the applicants who had cared well and provided for the child. The child had also been received well in the family. It was also her evidence that the applicants had fulfilled the legal requirements for local adoption, and that the adoption of the child was recommended.

The second witness was the guardian ad litem JOHN MOKAYA OMBEGA. His evidence was that he had done his duty as a guardian ad litem and compiled and filed his report. He testified that the child had accepted the environment and lived well with the other children in the family as well as the proposed adoptive parents. The child also appreciated the friends of the family and considered himself as part of the family and did not feel like an orphan. He further added that the child was being brought up as a

Christian, and therefore recommended the adoption.

The third witness was ESTHER KIHARA who worked for Child Welfare Society. It was her evidence that the child was abandoned by the mother in hospital and referred to the Child Welfare Society. The child was fostered with the applicants on 19/12/1999. It was also her evidence that the police and hospital have not managed to trace the parents or relatives of the child. The Child Welfare Society declared the child as free for adoption, and it was in the best interests of the child that he be adopted.

I have considered the evidence tendered before me and the documents and reports filed herein. The applicants are both Kenya citizens, and are resident in Kenya and are married under the Marriage Act (Cap. 150) which is a monogamous marriage union. They have two biological children and have chosen out of their own free will to adopt the child herein. They have the financial and material means to take care of the child as the first applicant is a Judge of the High Court of Kenya

The child is an abandoned child born in 1999 at Marie Stopes Maternity home in Eastleigh Nairobi. His mother abandoned him three days after delivery leaving the child behind. A report was made to Pangani Police Station. The Police have to date not been able to trace the mother nor any relatives of the child. Consequently, the Child Welfare Society declared the child as being free for adoption. All the reports filed show that the child has adjusted well in the family of the applicants since he was placed with them on 16th December 1999. The child is now a pupil at Kilimani Junior Academy in Nairobi.

With the evidence before me, I am satisfied that the child is free for adoption. As the child is an abandoned child, and as the biological parents or relatives have not been traced I will dispense with the requirement of parental consent for the adoption under the powers conferred on this court by section 159 of the Children Act No. 8 of 2001.

I am satisfied that the applicants comply with the legal requirements for local adoption and that they are able and willing to cater for the child if adoption orders are granted in their favour. I am satisfied that there is satisfactory bonding of the child in the family. I am also satisfied that it will be in the best interests of the child that he be adopted by the applicants. The adoption will give the child an opportunity to grow up in a family environment, which he would otherwise not have had.

Consequently, I allow the Originating Summons and grant the following orders –

1. The applicants DKM and YNKM be and are hereby authorized to adopt the infant to be known as MKM
2. The consent of the biological parents is hereby dispensed with.
3. I direct the Registrar General to make an entry of this adoption in the Adopted Children Register in the prescribed form.

Dated and delivered at Nairobi this 8th day of February 2007.

George Dulu

Judge3

In the presence of –

Mr. Bowry and Mr. Naiku for applicants.