



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 125 OF 2000
(IN THE MATTER OF ADOPTION OF DA & C
W) INFANTS

(IN THE MATTER OF ADOPTION OF DA & CATHERINE WANJIRU) INFANTS

R U L I N G

By an originating summons filed on 22nd November, 2000, as well as a supplementary affidavit filed in court on 9th April, 2001, the applicants, JCMand AEM, prayed the court to authorise them to adopt DA and Catherine Wanjiru.

The two also prayed that David Masidza Kikuyu and Yoland Cheron Masidza, be appointed “guardian ad litem to the infants, and finally, that the consent of the natural mother be dispensed with.

According to counsel for the applicants, Mrs. Musyimi, the children were abandoned by their parents, and their grandmother handed them over to New Life Home, and signed a document to that effect. Thereafter the grandmother too went underground and could not be traced. Nobody has claimed the children.

There is in the court file a letter dated 2nd November, 1999 from Kasarani Police Station written when the grandmother of the infant twins went to report the disappearance of their parents.

Thereafter on 7th November, 2000, the grandmother, RWK signed a form, “willingly giving up the two infants to New Life Home, because she could not care for them”. That was the day the infants were admitted into New Life Home.

From this evidence, I was satisfied that the natural parents of the two infants could not be traced to give consent for adoption and I thereafter dispensed with their consent.

Having done that I now turned to the issue of “guardian ad litem”, who both came to court on 9th March, 2001, David Masidza Kikuyu and Yolanda Cheron Masidza. They both gave their consent to be appointed legal guardians. There was an affidavit of fitness filed on their behalf. They had both filed a report but I pointed out that this was unprocedural, as they are not supposed to file a report until they are appointed by the court. Nevertheless I proceeded to appoint them “guardian ad litem” and accepted the report already filed.

According to their report, they both know the applicants and the infants personally. They have been to the applicant’s home several times and they belong to the same church group as the applicants. The two families live together in Ngumo Estate, Nairobi since 1989.

The report further shows that the infants had been in the custody of the applicant’s for the past 13 months prior to the filing of the application for adoption.

The two applicants came to court with their 3 other children, a son called W, and their two daughters S

and C. Both S and W whom I spoke to in court love the twins and want to have them as part of their family. I spoke to both applicants in court. From them, I learnt that they are Christians, infact Missionaries who both teach at Dayster University. The second applicant, E only teaches 3 times a week. She describes her boss as understanding because of the arrangements they have which enables her to look after he big family.

The two infants came into their care and possession on 21.1.2000 from New Life Home and have now become part of their family. The applicants confirmed to the court that they have sufficient funds to enable them to take on two additional children into their family. There was correspondent from Mr. & Mrs. L G and M L T, brother in law and sister of the applicants J & A M stating that they “agree to be legal guardians of the two infants” in the event of the death of J and A M.

The applicants have a monogamous marriage. Their marriage licencee was attached to the proceedings.

There was also a letter from Daystar University to confirm that they work there and their salary is processed through them and further, that their contract of employment is open ended. There is a Doctor’s letter, giving the twin’s date of birth as 6.9.99. There is also a comprehensive study report for adoption by the Social Worker from New Life Home. She made a home visit to the M when the infants were in their possession.

From the evidence which I have considered in this application, especially the fact that the twins were abandoned by their parents and relatives who cannot be traced, further that the applicants, though of a different race have had the infants in their possession for a period of over one year, within which time they seem to have become a family from what I observed. I even spoke to the three children of the M. They too seem to have become quite close to the infants and would like to continue to have them in the family.

The M have sufficient financial resources to be able to look after the additional 2 infants apart from their 3 children. They have even made provisions for the infants in their will, though they have not got the adoption order from court. I am satisfied from the evidence that the M love these infants and want to adopt them so as to provide a home and security for them.

The Adoption Act prohibits adoption of children by persons who are of a different race from the infant unless there are special circumstances. The M are American Nationals.

The twins are Kenya Africans. Are there any special circumstances that would make the court authorize the M to adopt these infants? I consider the following points as some of the special reasons.

- 1. The fact that the M having had their usual residence in this country since 1989 and are still continuing to do so for an indefinite period.**
- 2. Secondly, their marriage is monogamous and further more they already have 3 children of their own and have therefore in my opinion, showed that they know how to look after children and can be trusted with these infants.**
- 3. Thirdly, they have impressed me as people who love these infants.**
- 4. Again they have sufficient financial resources to provide for the infants as well as their own three children. This will give security to the infants.**
- 5. Further to the above four points, the M have identified relatives who can step in their shoes and look after their children as well as the two infants in case they were not their for one reason or another. These to me are acts of people who are committed to being parents to infants such as these.**

So, though the applicants are not the same race as the infants, I think there are sufficient reasons as I have enumerated above, to warrant me to authorise the adoption of these children by the applicants. I therefore proceed to make an order authorizing JCM and A E to adopt the 2 infants who from today henceforth should be known as J H W M and L C A M.

Dated at Nairobi this 7th day of June, 2001.

JOYCE ALUOCH

PUISNE JUDGE