



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

ADOPTION 7 OF 2020

IN THE MATTER OF ADOPTION OF BABY MM

FMM

GKT.....JOINT APPLICANTS

AND

LITTLE ANGELS NETWORK.....RESPONDENTS

JUDGMENT

1. Through an originating summons dated 14th July 2020, FMM and GKT hereinafter referred to as the 1st and 2nd applicants respectively came to this court seeking orders that;

- a. Baby MMO alias AM be declared a Kenya citizen;**
- b. Consent pursuant to Section 159 of the Children Act be dispensed with**
- c. The applicants be authorized to adopt baby MMO alias AM**
- d. After adoption the baby be named as MB**
- e. Upon making adoption order JZC be appointed guardian of the child;**
- f. The adoption be entered in the adopted children's register by the Registrar General and costs be in the cause**

2. The application is premised upon grounds stated in the affidavit in support jointly sworn on 14th July, 2016 by the applicants. According to the said particulars, the first applicant was born on 29th June 1974 while the second applicant was born on 13th January, 1969. They are both Kenyan citizens residing in Mombasa.

3. They solemnized their marriage on 5th March, 2005 at Kasarani. Professionally, the 1st applicant is a banker currently working with [Particurlas withheld] Bank while the second applicant is working at [Particuars withheld] as a senior clerk.

4. Despite having been married since 2005, the couple has not been blessed with any biological child. Their motivation to adopt the baby herein has been prompted by the desire to have a complete family and have a responsibility on how to take care of a child/children.

5. Regarding the minor herein a male child, he was born on 3rd May, 2017 at Mbale Referral Hospital, to FA a fifteen year old child and ROO a nineteen year old boy who are said to be close relatives. According to their community customs and cultural practices, a child born out of such a relationship is a taboo hence a bad omen.

6. Consequently, on 5th May, 2017, FA and ROO's families approached Little Angels Network – Kisumu office seeking help to surrender the child born out of an incestuous relationship for adoption. As a result, an initial consent dated 5th May, 2017 surrendering the child voluntarily for placement in a children's home for adoption was entered.

7. On 21st September, 2017, EMS the child's maternal grandmother and ROO the child's biological father signed the six weeks legal consent which was attested before an advocate namely K Edwin.

8. Vide Winam children's court Protection and Care Case No [...], the child was formally committed into the legal custody of New Life Home Trust.
9. During its case committee meeting held on 29th September, 2017 Little Angles Network declared the child free for adoption. A certificate S/No. [...] was issued to that effect. Subsequently, the child was placed under the care and control of the applicant.
10. Six months having lapsed since the child was surrendered for adoption and taking into account that the child had been declared free for adoption, adoption proceedings before this court commenced.
11. Through a chamber summons dated 14th July, 2020, ANK was appointed as guardian Ad litem on 23rd September, 2017. The Director Children Services and the guardian Ad litem were directed to file their respective evaluation reports within 14 days.
12. Before the hearing commenced, the Director Children Services through the County Children office Mombasa filed his report on 1st November 2020 thus recommending the adoption. The guardian Ad litem also filed his report on 9th October 2020 also recommending the adoption. Similarly, Little Angles Network filed theirs on 8th October, 2020 also approving the adoption.
13. All the three reports described the applicants as financially stable people, caring, loving, Christians with no criminal record, mentally and physically fit.
14. During the hearing, the applicants pleaded with the court to grant their prayers to adopt the baby herein. They acknowledged that they understood the consequences of adoption and that it was permanent.
15. I have considered the application herein, statement of particulars, affidavit in support and testimony by various witnesses. The child herein was born out of an incestuous relationship between FA then a minor (mother) and a young man ROO aged 19 years.
16. According to the consent entered on 5th May, 2017 by the biological parents of the child, they were surrendering the child because he was born out of an incestuous relationship. Both paternal and maternal grandparents to the minor consented thus satisfying the requirement under Section 159 of the Children Act.
17. The child was born of Kenyan parents at Mbale referral hospital. This hospital is within the Republic of Kenya hence the child is deemed to be a Kenyan by birth. The child was declared free for adoption and subsequently placed for care and control for a period of three consecutive months pursuant to Section 157 (1) of the Children Act.
18. Under Section 157 the Children Act, any child who is resident in Kenya whether born or not born in Kenya is eligible for adoption. I have no doubt the child is legally available for adoption.
19. Are the applicants suitable to adopt the baby? The applicants are both Kenyan citizens aged between 25 years and 65 years which is the recommended age bracket for potential adoptive parents pursuant to Section 158 of the Children Act. They have been described by all stakeholders as people who are financially stable and responsible, caring and loving.
20. In their respective testimonies, the applicants acknowledged and appreciate the consequences of adoption. They have fully bonded with the child for about four years now. This being a local adoption, I am satisfied that the applicants have met the requisite conditions precedent to adopt the child.
21. Is the adoption in the best interests of the child? Article 53 (2) of the Constitution and Section 4(2) (3) of the Children Act underscore the paramountcy of the best interests of a child principle in any decision-making process affecting the welfare or interest of a child.
22. In the instant case, the minor herein has been declared a taboo to the community hence not wanted. He has found a loving and caring family with whom he has fully integrated. He is assured of generational identity and provision of basic necessities like food, shelter, clothing, education and medical care. Obviously, the child will stand to benefit and he is sure of a bright future and something to inherit.
23. Accordingly, I am persuaded to allow the application with orders that;

a. The applicants are authorized to adopt baby MMO alias AM who henceforth shall be known as MB.

b. The child's date of birth shall be 3rd May, 2017 and place of birth Mbale Kenya.

c. That the child is declared to be a Kenyan citizen.

d. That the Registrar General to enter the adoption in the adopted children's register.

e. The guardian Ad litem is hereby discharged.

f. That JZC is hereby appointed as a legal guardian to the baby in the event of any eventuality befalling the applicants.

Dated, signed and delivered at Mombasa this 12th day of March, 2021

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J. N. ONYIEGO

JUDGE