



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 18 OF 2018

IN THE MATTER OF: AN APPLICATION FOR ORDERS OF ADOPTION OF THE MINOR Z A – A CHILD

BETWEEN

M H H K

W H K.....JOINT APPLICANTS

AND

CHANGE TRUST.....RESPONDENT

JUDGMENT

1. This is a kinship adoption in which the joint applicants herein MHHK and WHK (hereinafter referred to as the 1st and 2nd applicants respectively), filed an originating summons dated 25th September, 2018 seeking orders that;

- (i) They be authorized to adopt baby ZA and upon adoption the child be known as ZA;***
- (ii) Upon adoption, HH be appointed as guardian of the child;***
- (iii) The Registrar General to enter the adoption in the adopted children's Register and that costs be in the cause.***

2. The application is premised upon an affidavit jointly sworn on 25th September, 2018 by the applicants in which they stated that; they are Kenyan citizens of African origin; their date of birth is 1980 and 1981 respectively and that, they are in a monogamous marriage having solemnized the same on 24th December, 2005 at the Kadhi's office Mombasa vide marriage certificate Serial No. xxxx.

3. The two applicants have not been blessed with any biological child despite having a clean medical bill of health from their Doctors. The intention to adopt the baby has been prompted by the need to have an expanded family even as they continue trying in having their own biological baby.

4. Economically, the applicants are people of means with the applicant working at [Particulars Withheld] as a business Development Manager earning about kshs 380,000/= per month while the 2nd applicant is a pharmacist working with [Particulars Withheld] earning about kshs 113,000/= per month.

5. Regarding the child, he was born on 27th January, 2015 to AAH and AON being mother and father respectively who are also close relatives to the applicants. The biological parents have signed the requisite consent forms dated 11th July, 2018 thus relinquishing their parental responsibility over the child citing family differences and inability for the biological mother to take care of the child after their separation. They acknowledged that sometime 2015 when the child was handed over for adoption, it was a big community ceremony where the community was involved in witnessing delivery of the child to the applicants.

6. The child was declared free for adoption by Change Trust Adoption Society on 21st July, 2018 vide adoption certificate Serial No. [Particulars Withheld]. Subsequently, the applicants moved to this court seeking the adoption orders and the appointment of a guardian Ad Litem. Pursuant to a chamber summons dated 1st March, 2019, MT was appointed a guardian Ad Litem on 3rd April 2019. Consequently, the office of the Director Children Services was directed to file its evaluation report.

7. Prior to the hearing, the office of the Director Children Services filed a report dated 15th October, 2019 thus recommending the adoption. The guardian ad Litem filed his report on 18th September, 2019 also supporting the adoption process. Change Trust Adoption Society recommended the adoption through its report dated 23rd March, 2019. All the stakeholders described the applicants as financially stable, responsible, mentally and physically fit, religious, morally upright and people with no criminal record.

8. During the hearing, the applicants urged the court to grant their prayers. They acknowledged that they understand the consequences of adoption and that it is permanent. Pw3 and pw5 the biological father and mother to the child respectively testified in court thus supporting the adoption. They described the adoption of the child by the applicants as being in the best interests of the child.

9. I have considered the application herein, materials in support, testimonies by various witnesses including the biological parents of the minor. Issues for determination are; whether the child is available for adoption; Whether the applicants are suitable to adopt the baby and, whether the adoption is in the best interests of the child.

10. To start with, the minor herein is a Kenyan citizen aged above six weeks and below 18 years which is the age bracket for a child sought to be adopted pursuant to Section 156 of the Children Act. Under Section 157(1) of the Children Act, any child who is a resident within Kenya may be adopted whether or not the child is a Kenyan citizen, was or was not born in Kenya.

11. The minor has been declared free for adoption and the biological parents have voluntarily given consent thus surrendering their parental responsibilities over the minor to the applicants who are their relatives. This is basically a kinship adoption hence a local adoption. Accordingly, the minor is available legally for adoption.

12. As concerns the suitability of the parents, the key stakeholders have filed their reports recommending the adoption. The applicants are people of means earning a combined monthly income of about kshs500,000/=.

13. They profess Islamic religion a fact that guarantees the baby a firm spiritual foundation. They are medically and physically fit, caring and responsible. They are Kenyan citizens aged between 35 and 65 years thus placing them within the age bracket recommended for any adoptive parent under Section 158 of the Children Act.

14. Having understood the consequences of adoption and that it is permanent, I have no doubt the applicants have met the requisite requirements to adopt the minor.

15. Concerning the aspect of whether the adoption is in the best interests of the child, I am guided by Article 53(2) of the Constitution and Section 4(2) and (3) of the Children Act which underscores the best interests of a child Principle as the determining factor before making any decision affecting the affairs of a child.

16. In the instant case, the biological parents of the minor are divorced. The mother is unable to cater for the basic needs of the minor. Both parents acknowledged that they were unable to fully take care of the child. In the hands of the applicants, the child is already schooling. He is enjoying provision of basic necessities like, food, clothing, education, medical care and shelter at South B Estate in Nairobi.

17. Indeed, the child's best interest is well taken of. The child has fully integrated with the adopting family who have assured her of inheritance. Having held as above, the application herein is allowed with orders that: -

- (a) The applicants be and are hereby authorized to adopt baby ZA who henceforth shall be known as ZA.**
- (b) That the Child's date of birth shall be 27th January, 2015.**
- (c) That the Registrar General is hereby directed to enter the adoption order herein in the adopted children's register**
- (d) That the guardian ad litem is discharged.**
- (e) That HHK is hereby appointed as the legal guardian to the child in the event of death or any eventuality befalling the applicants**

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA ON THIS 4TH DAY OF MARCH 2021.

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J.N. ONYIEGO

JUDGE