



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KIAMBU
ADOPTION CAUSE NO. 15 OF 2018
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY BW (MINOR)

GNG.....1ST APPLICANT

LMM....2ND APPLICANT

RULING

1. The Applicants herein are GNG (male Applicant) and LMM (female Applicant). They are a married couple aged 55 and 54 years, respectively. Although they have cohabited since 1991, they formalized their marriage in 2017 under the Marriage Act but they have no children of their own. They are both employees of the County Government of Kiambu.
2. GNG (1st Applicant) is an Agricultural Officer while his wife LMM is a Senior Registered Nurse. They live in their own home at Makongeni, Thika. Their monthly gross income is close to Kshs. 90,000/-. Both subscribe to the Christian faith although the 1st Applicant appears to be more of a nominal adherent.
3. The Applicants have applied to adopt baby BW, a female now aged about five years. BW was discovered by a Good Samaritan while abandoned at Dagoretti open air market. She was about 2 months old. The Good Samaritan took the child with her and reported to Dagoretti Police Post on 1st July, 2015 vide OB NO. 23 of 1st July, 2015. Subsequently, police allowed the Good Samaritan to continue caring for the subject minor until a suitable children institution could be found. Eventually, in September, 2015, the minor was admitted into Frances Jones Dagoretti Children Centre.
4. On 29th June, 2016 vide an order made in Protection and Care Case No. 122 of 2016 by the Children Court, she was committed to the Centre where she remained until 2017. Efforts to trace her parents were unsuccessful and nobody came forward to claim her. On 29th July, 2017, the minor was declared free for adoption vide certificate no. 001764 by Little Angels Network. In September, 2017, the subject was placed in the care of the Applicants.
5. Pursuant to the orders of this court, the guardian ad litem and the Children's Officer Thika West Sub-County filed their respective reports. The court has now reviewed the social enquiry report by Little Angels Network and the reports by the guardian ad litem and Children Officer Thika West Sub-County. The two former reports appear positive and present a mature, stable couple that is desirous of adopting the minor herein. Indeed, the reports indicate that the Applicants have the financial capacity to care for the minor.
6. While this latter fact is confirmed by the Children Officer's report, it appears from the said report that there are serious differences concerning the adoption between the two Applicants, and that it seemed to the said officer that the 1st Applicant was the prime mover of the process while the 2nd Applicant adopted a distant stance. The report states inter alia that the said Applicant when pressed was not ready to share her personal perspective on the adoption even while asserting that the idea was initially hers. On his part, the 1st Applicant stated to the officer that the female Applicant avoided taking the subject minor along to public functions though claiming that she has connected well with the minor.
7. The observations of the Children's Officer were inter alia that the 1st Applicant appeared more interested in the adoption than the 2nd Applicant; that the subject minor appeared more bonded with the house help and the 1st Applicant than with the 2nd Applicant who was distant; that the 2nd Applicant appeared "very reserved" and seemingly in "suffering". In conclusion, the report states that despite apparent passivity of the 2nd Applicant, the couple has bonded with the subject. The report concludes that:

“Considering the best interests of the child, the best place for a child is in the family. However, the parties need to work on their individual relationship with the child so that the subject does not appear to be more with the house girl than the adoptive mother. In case the adoption orders are granted, caution should be taken to ensure the subject is safe and connects well with both Applicants.

If possible, I would recommend that there should be a clear will and guardianship arrangements registered and deposited as part of the adoption process-----. I therefore leave the final decision at the discretion of this honorable court.”

8. The report does not expressly endorse the proposed adoption but highlights what this court considers troubling aspects in the relationship between the Applicants themselves and with the subject minor on the other hand. This court does not feel assured, given the contents of the Children’s Officers’ report that the Applicants as a couple are ready for the adoption. The adoption has been sought by the Applicants as a couple, and yet it seems that a key party that is the proposed adoptive mother, is reluctant and has not quite bonded with the subject minor three years since placement. Obviously, that is a major problem, and it is not clear what it will take for adequate bonding to happen between the adoptive mother and the subject minor.

9. Certainly, the current placement cannot continue indefinitely as the subject minor would be adversely affected if the adoption application were to fail. The couple has admittedly had their own share of challenges especially due to their childlessness and the court does not expect any couple to be perfect. However, it is ideally imperative that the couple jointly owns the decision to adopt the minor. The sooner this is demonstrated the better for the subject minor.

10. At this stage, the primary concern by the court is the best interests of the child and although the 1st Applicant appears very eager with the prospect of adopting a daughter, the subject is not intended to be adopted by the male Applicant solely but by both adoptive parents. The fact that the subject is a female minor is pertinent. The court would be loath to make an order which would permanently place the subject minor in an evidently tense family situation and apparent simmering conflict between the Applicants. The risk that the Applicants could well decide to go their separate ways does not seem farfetched, in which eventuality the minor may end up under sole responsibility of the male Applicant.

11. In the circumstances, the court will not make an adoption order at this stage but will give time to the Applicants to resolve the differences in their relationship and concerning the adoption process. For this purpose, a limited period of six (6) months is hereby allowed. The court directs that in this period, the Applicants, through Little Angels Network seek professional family counselling. The professional Counselor will subsequently file a report into the Court and thereafter the Children Officer will re-assess the Applicants and prepare a further report.

12. In the circumstances, this matter will be mentioned before the Judge not later than the first week of December 2021 for her further orders and or directions as to the completion of the adoption process and/or final decision herein. In the meantime, the Applicants will continue to have the custody of the subject under the terms of the care agreement executed between them and the Frances Jones Dagoretti Children Centre for a further period of six months from the date of this ruling.

DELIVERED AND SIGNED ELECTRONICALLY ON THIS 7TH DAY OF MAY 2021

C. MEOLI

JUDGE

In the presence of:

Both Applicants in person

: Kevin Ndege : Court Assistant