



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 91 OF 2018

IN THE MATTER OF THE CHILDREN'S ACT (ACT NO. 8 OF 2001)

IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER IN RESPECT OF BABY N

DNM.....1ST APPLICANT

MIC.....2ND APPLICANT

JUDGMENT

1. The applicants herein D N M (1st applicant) and M M C (2nd applicant) moved this court through an Originating Summons dated 10th April 2018 seeking orders;

- i. That the applicants, DNM and MMC be authorized to adopt the child currently identified and known as Baby N**
- ii. That the child be renamed as MOM,**
- iii. That this Honourable Court to declare that the child's date of birth is 16th March 2017 and his place of birth is Nairobi County.**
- iv. That the child be presumed to be a Kenyan citizen, and be entitled to the rights and benefits of a Kenyan citizen, including issuance of a post adoption certificate of birth and a Kenyan Passport;**
- v. That the guardian *ad litem* be discharged and EOM be appointed as the child's legal guardian in the event that the applicants herein are incapacitated or in any way unable to discharge their parental obligations.**
- vi. That the Registrar General makes the appropriate entries in the Adopted Children's Register and do issue a Certificate to that effect.**

2. The application is supported by a joint statement in support dated 10th April 2018 and an affidavit sworn on the same day by the 1st applicant with authority from the 2nd applicant.

3. The applicants herein are Kenyan citizens . They are husband and wife who contracted their marriage under Gusii Customary Law and thereafter solemnized the same at the Registrar of marriages Nairobi on 2nd August 2017 under the Marriage Act. The 1st applicant born on 21st June 1986 is a Nurse by profession working at Kenyatta National Hospital. On the other hand, the 2nd applicant whose date of birth is indicated as 15th October 1978 is a business lady operating a salon.

4. The couple has not been able to have a child of their own owing to medical complications of the 2nd applicant. The motivation to adopt the baby has been propelled by the desire to extend a family through adoption.

5. Regarding the status of the child, he was born on 16th March 2017 to M/s EKG. On 20th March 2017, the mother approached KKPI Adoption Office with the intention of offering her child up for adoption. Having been taken through the explanatory memorandum and the consequences of giving her child for adoption, she acknowledged and therefore signed the certificate of acknowledgment on 20th March 2018.

6. In her letter to the Society, M/s EKG indicated that she was giving up her child for adoption due to financial constraints, lack of a permanent place to stay, unemployment and that she had another child whom she had given to her mother to look after.
7. Consequently, the child was admitted at Happy Life Children's Home on 20th March 2018 for care and protection vide **Nairobi Children's Court Care and Protection Case No. 278/2017**. The child was on 14th June 2017 formally committed to Happy Life Children's Home for protection and care.
8. Subsequently, the minor was declared free for adoption by the Kenyan to Kenyan Peace Initiative Adoption Society Care Committee sitting on 30th August 2017 and a Freeing Certificate S/No. 570 issued pursuant to Section 156(1) of the Children's Act 2001. The child was later placed under the care and control of the applicants for mandatory three months continuous period pursuant to Section 157 (3) of the Children's Act.
9. Vide a Chamber Summons dated 10th September 2018, Margaret Muthuke Muema was appointed guardian *ad litem* and the Director Children Services directed to file an assessment and Evaluation report within 45 days in compliance with Section 157(1) of the Children's Act.
10. Consequently, the Director Children Services filed his report dated 29th November 2018 in which he declined to recommend the adoption on grounds that there was no DNA to prove that the person offering the baby for adoption was indeed the biological mother. Consequently, the Children Adoption Society facilitated the DNA examination of the alleged mother.
11. Being satisfied with the positive DNA report dated 24th May 2019 confirming that EK was indeed the biological mother, the Director Children Services filed a supplementary report dated and filed on 1st August 2019 thus effectively recommending the adoption. Equally, the guardian ad litem filed her report on 16th February 2019 also recommending the said adoption. Further, vide their report dated 6th March 2019, Buckner Kenya Adoption Society filed their report thus recommending the adoption. Both reports described the applicants as financially stable, committed Christians worshipping at [particulars withheld]SDA Church, have no criminal record, medically, socially, physically and morally fit.
12. During the hearing, the applicants pleaded with the court seeking authority to adopt the baby. They confirmed that they fully understood the consequences of adoption and that it was permanent.
13. I have considered the application herein. Issues for determination are:-
- a. Whether the child is available for adoption;**
 - b. Whether the applicants are suitable to adopt the baby;**
 - c. Whether the adoption is in the best interest of the baby.**
14. The subject herein is a Kenyan citizen aged about 3 years. She is therefore above 6 weeks and below 18 years being the age bracket for an adoptive child pursuant to Section 156(1) and 158 of the Children's Act. Under Section 157(1) of the Children's Act, any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya.
15. The child having been given up by the biological mother for adoption on account of financial inability to meet the necessary child care needs, consent was duly executed and given without any influence, or coercion. The child having been declared free for adoption and duly placed for a mandatory 3 months duration in the care and protection of the applicants, it is clear that the requisite conditions for the child to be adopted have been met.
16. Concerning the suitability of the applicants, they are both Kenyan citizens aged between 25 and 65 years being the mandatory age bracket for adoptive parent/s in compliance with Section 158 of the Children's Act. They have understood the consequences of adoption and that it is permanent in nature. They have fully bonded with the child who fondly refers to them as dad and mum. They are also financially stable hence the ability to provide for the basic requirements.
17. On their moral, social, mental, physical and spiritual aspect, they were described as fit and compliant. I have no doubt the applicants have met the threshold or conditions precedent to warrant the court grant them the orders to adopt the baby.
18. Relating to the best interest of the child, Article 53(2) of the constitution and Section 4(2) and (3) of the children's Act are the guiding legal provisions which emphasize on the best interests of a child principle as the paramount consideration before making any decision affecting a child.
19. The mother to the child expressed her inability to look after the child effectively. Technically, she surrendered her parental responsibility relating to the child. People in society have various capacities and abilities to do certain things. In this case, the child was exposed to social and economic challenges which would affect his growth and development.
20. In the hands of the applicants, the baby is assured of basic provisions such as education, food, clothing, medical care, shelter and many others. It is in his interest that the adoption be allowed.
21. Accordingly, I am satisfied that the applicants have met the necessary requirements for adoption and therefore allow the application with

orders that;

- i. The applicants herein are hereby authorized to adopt baby N who henceforth shall be known as MOM;**
- ii. That the child's date of birth shall be 16th March 2017 and his place of birth Nairobi County.**
- iii. That the child shall be presumed to be a Kenyan citizen entitled to the rights and benefits of a Kenyan citizen including issuance of a post adoption certificate of birth and a Kenyan passport;**
- iv. That the Registrar General is directed to make appropriate entries in the Adopted Children Register;**
- v. That the guardian *ad litem* is hereby discharged.**
- vi. That EOM shall be and is hereby appointed as the legal guardian in the event of death or any eventuality be falling the applicants.**

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 9th DAY OF APRIL 2020.

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J. N. ONYIEGO

JUDGE