



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 244 OF 2012 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF A CHILD DC
BY
SOA & GAO (APPLICANTS)
JUDGEMENT

1. The Applicants **SOA & GAO**, moved this court by way of an Originating Summons dated the 6th of November 2012, seeking for orders that; -

- a. That **ANG** be appointed as guardian *ad litem* herein.
- b. That the Director of Children's Services be directed to compile a report on the applicants' fitness to adopt the child.
- c. That the said applicants be authorised to adopt the child **DC** and upon such adoption the child's name be changed to **BAO**
- d. That **GA** be appointed as Legal Guardian of the child.

2. By a ruling dated 17th May, 2013 the court appointed **ANG** as guardian *ad litem* and required the said guardian *ad litem* and the Director of Children's Services Department to conduct a social enquiry on the Applicants' fitness and the prevailing circumstances as relates to this adoption and file their respective reports.

3. For some unexplained reason the matter stalled until the 11th of October 2018.

4. The necessary reports referred to in paragraph 2 above were filed in court on 7th and 10th December 2018 respectively. Both reports highly recommended the Applicants as suitable and fit persons to be considered for the adoption.

The court was informed that the First applicant is a trained store keeper and the 2nd a trained nurse. Both are now retired, are currently farmers and run a small shop in Rongo in Migori where they now reside. At the time the report was compiled by the Children's Services Department the applicants were 67 & 55 years of age respectively.

5. The applicants have been married to each other for over 40 years. They do not have a child of their own as in 1979 they lost a child and a second pregnancy failed, since then they have not succeeded with child bearing. The child herein was placed with them on 16th December 2008, 11 years ago, from Thomas Barnardo House. The child is said to have bonded well with them and refers to them as 'mum' & 'Dad'.

6. The child, **DC** is said to have been abandoned at Kawangware in Nairobi on or about the 7th of June 2007 and found by a good Samaritan who immediately took him to Riruta Police Station from where they were referred to Kilimani Police station and the matter was recorded as reference OB NO. [xxxx]. Thereafter the police sought to place the child at Thomas Barnardo house for protection and care on 8th June 2007. On the 25th of July 2007 the Senior Magistrates Court in Case No. 129 of 2007 committed the child to the said home. Kilimani Police after a period of 11 months confirmed that they had not traced the child's family and the child was declared free for adoption by the Kenya Children Home Adoption Society Case Committee on 20th June 2008. After which the child was placed with the Applicants for foster care on 16th December 2008 pending formal adoption. The child is presumed to have been born on the 8th of June 2007.

7. The proposed legal guardian **GA** is a sibling of the male applicant and he has consented to being appointed as such and is ready to take up responsibility in the event the applicants are not there or are both incapacitated before the minor attains age of majority.

8. The court notes the requirements of the law on the age of the prospective adoptive parents. However, the court takes cognisance that at the time of applying to court the applicants were 60 and 48 years old and the fact the child who is now 12 years old has been with the applicants entirely all his young life.

9. Against the above background I have formed the opinion that the Applicants herein **SOA & GAO**, are suitable and fit persons to adopt the child herein and that the said adoption is for the best interest of the child, who has found parents who have provide a home and the much-needed love, care and attention all children deserve.

The adoptive parents will take full responsibilities and obligation of parents towards the child who now becomes their full responsibility with all rights of a child under the law and including the right to inherit the applicants.

10. On the other hand, the legal guardian will take full responsibility over the child should the applicants both die or get incapacitated before the minor is of full age.

11. Consequently, I make the following orders.

- a. That the Applicants **SOA & GAO** be and are hereby authorised to adopt **DC**.
- b. That the child's name will upon this adoption be **BAO**.
- c. That **GA** be and is hereby appointed as legal guardian of the child now to be known as **BAO**
- d. That the Registrar General do enter this adoption in the adoption register.
- e. The guardian *ad litem* be and is hereby discharged from the duties earlier conferred upon him by the court.

SIGNED DATED and DELIVERED in court this 4TH day of Day of APRIL, 2019.

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ALI-ARONI

JUDGE

In the presence of:

Counsel for the Applicant.....