



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

ADOPTION CAUSE NO. 78 OF 2018

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF ADOPTION OF CHILD JBW

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY

RNW.....1ST APPLICANT

JBO.....2ND APPLICANT

JUDGMENT

1. The applicants are a couple aged 53 and 33 years respectively. The first applicant is a Kenyan citizen while the second applicant is a citizen of Ireland. They were married on 4th October 2014. The marriage was blessed with one biological child on 21st August 2016. The applicants filed the originating summons on 20th June 2018 seeking to be allowed to adopt the female child who is estimated to have been born on 20th July 2007.

2. Child JBW is the biological child of the 1st applicant. The biological father abandoned the child and relocated from Kenya when the child was still a baby and has neither been seen nor heard since 2010. The 1st applicant swore and signed an affidavit giving consent towards the adoption on 20th March 2018. The child was declared free for adoption under **Section 156(1)** of the **Children's Act** by the Kenya children's home case committee on 18th April 2018.

3. The court on 20th September 2018 appointed LK as guardian *ad litem* and ordered that she files a report after carrying out a social inquiry on the applicants. A similar report was sought from the Director of Children Services. Both reports were duly filed, and each recommended that the applicants be allowed to adopt the child. The reports found that the applicants were socially, emotionally and financially stable and suitable to adopt the child. It was also found that the child and the applicants had bonded well.

4. The applicants filed their submissions on 27th February 2018 which I have read and considered. It was their submissions that the consent of the biological father ought to be dispensed with, as he abandoned them and has not made contact for over (8) years. As regards the moratorium on inter country adoptions, it was their submissions that the application should not be barred on grounds of the moratorium on inter country adoptions as the 1st applicant was the biological mother of the child, with sole parental rights and responsibility of the child and the 2nd applicant was her husband who had lived in Kenya for the last eight years. It was their submissions that the child had bonded well with the 2nd applicant and he was the only father the child ever knew thus it was in the best interest of the child that the application be allowed. They relied on the case of CC (Child) (2017) eKLR, where the court found that the adoption application, where one of the applicants was the child's biological parent and the other was a foreigner resident in Kenya was a local adoption and not an inter-country adoption that would fall within the application of the moratorium.

5. In the case of CC (Child) (2017) eKLR the court held;

Given the fact that baby c does not have any other known parent other than the step father (1st applicant) and biological mother (2nd

applicant), she cannot be separated nor can she lead an independent separate life. She needs parental care, protection and guidance from parents and wherever possible resides with her parents. (See article 19 of the African Charter on the rights and welfare of the child and article 12 of the convention in the rights of the child). This being a kinship adoption, the same shall be classified as a local adoption.

Similar position was held in the case of **J.M. (minor) (2018) eKLR Adoption Case No. 259/2014 Nairobi** and in the case of **Baby I.J. (minor) (2015) eKLR**.

6. **Article 53(2) of the Constitution of Kenya 2010** provides that “A child’s best interests are of paramount importance in every matter concerning the child.” further **Sections 4(2) and (3)** of the Children’s **Act** provide that “*in all actions concerning children all public and private bodies, courts of law and legislative authorities, when exercising powers under the Act, shall treat the interest of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to (a) safeguard and promote the rights and welfare of the child; (b) conserve and promote the welfare of the child, and (c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.*”

7. The court takes cognance of the **Moratorium on Inter-Country Adoption of Kenya Children** that was declared on 27th November 2014 by the Cabinet. The Cabinet approved an indefinite moratorium on inter-country adoption of Kenya children by foreigners, and also revoked all licences to conduct adoptions in Kenya with immediate effect. Either way each case shall be determined on its merits (**see the case, In re M (Baby) [2017] eKLR** in the instant case applicants have demonstrated their ability to provide a conducive home and family environment in which the child will grow and develop. **The 2nd applicant has been resident in Kenya since 2014 and together with the 1st applicant have a permanent residence in south B. They were further blessed with their biological child on 21st August 2016.**

8. I note that the applicant is the only father the child knows and has well bonded with her. Consequently the court finds that it is in the best interest of the child to be adopted by the applicants. They will assume all parental rights and obligations of the biological parents of the child once adopted, and shall treat her as if she was borne to them. They have been made aware that once the adoption order is made, it shall be final and binding during the lifetime of the child. The child shall have the right to inherit their property. The applicants shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child. This court dispenses with the consent of the child’s biological father who abandoned the baby upon delivery.

9. Having been satisfied that all the legal requirements for a local adoption under the **Children Act** have been met, the following orders shall issue:-

- a) **The applicants RNW and JBO are hereby allowed to adopt Child JBW;**
- b) **child JBW shall henceforth be known as JBO;**
- c) **The child’s date of birth shall be 20th July 2007, and shall be presumed Kenyan by birth;**
- d) **GG and RWK are hereby appointed to be the child’s legal guardians in the event of the death or incapacity of the applicants before she is of full age and fully self-reliant;**
- e) **The Registrar-General is directed to enter this adoption in the Adopted Children Register; and**
- f) **The guardian *ad litem* is hereby discharged.**

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF MAY, 2019

J.N. ONYIEGO

JUDGE