



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

ADOPTION CAUSE NO. 8 OF 2018

IN THE MATTER OF THE CHILDRENS ACT, 2001

AND

IN THE MATTER OF DTO (A CHILD)

RLM..... 1ST APPLICANT

AON.....2ND APPLICANT

JUDGMENT

1. By **Originating Summons** dated 27th September 2018, **RLM** and **ADON**, applicants, both of P. O. Box [xxxx], Nairobi, applied from this court authority to adopt, DTO, a 15-year-old minor. They simultaneously applied that PKN of P. O. Box [xxxx] Ngong Town be appointed a guardian ad litem to the said DTO. pending a decision on the adoption application.

2. On the 3rd October, 2018 the court granted an order directing the Director of Children Services, Kajiado County to file a report on the applicants' fitness to adopt the minor. The report was filed in court on 6th December 2018. It set the background of the applicants leading to the application for adoption.

3. The 1st applicant is husband to 2nd applicant. The 2nd applicant is the biological mother to DTO. The 2nd applicant conceived DTO with another man and gave birth in 2005. Her boyfriend and, therefore father to DTO, disappeared immediately the 2nd applicant became pregnant and left the 2nd applicant to raise DTO on her own. Sometime in 2011, the 2nd applicant met the 1st applicant and after sometime, they moved in and later got married in a civil marriage solemnized on 13th January 2012 at the Registrar's office Nairobi. The two are now husband and wife and have 4 other children born out of that marriage namely;

RSM – 8 years' old

MPM – 6 years' old

EHM – 4 years' old

JFM – 11 months' old

4. The 1st applicant is not therefore the biological father to DTO. However, he took in DTO and immediately assumed parental responsibility over him. He pays his school fees and meets all other financial obligations of the child who is now in form one. It is the 1st applicant who takes care of him in conjunction with the 2nd applicant, the mother in all respects.

5. The report from the Children's Office confirms that the child is living with the rest of the family and that both applicants have been taking care of him without exception and that the 1st applicant plays his parental responsibility towards him; that they have integrated well and live as one harmonious family. The 2nd applicant has sworn an affidavit stating that as the biological mother, she has willingly accepted that the 1st applicant adopts the child.

6. During the hearing, the applicants told the court that they have lived together as husband and wife since January 2012 and that it would be in the interest of the child that their application for adoption be allowed. The 2nd applicant confirmed to court that the 1st applicant has always been there for the child and since the child's biological father ran away immediately after she conceived, he has never come to find out how the minor was doing 15 years later and she does not know where he is. She therefore told the court that it is only fair and in the best

interests of the child that their application for adoption be allowed. The applicants told the court that they are employed and have other means of income and are therefore able to cater for the child's Wellbeing together with their other children. They swore an affidavit attaching documents showing their financial status, including those for the property they own as a couple.

7. During the hearing, the minor was in court. He told the court that he had no objection to being adopted; that he has known the 1st applicant as his father since 2012 and that the 1st applicant has always provided for him and taken care of him as his own son.

8. JWA and MAO have also filed an affidavit consenting to being appointed legal guardians for the child in the event the applicants are not around. They state that they understand their obligations as legal guardians and that they will be able to discharge their obligation towards the child in the event something happens to the applicants.

9. I have considered the application and the circumstances leading to the application for adoption. The applicants are husband and wife. The 2nd applicant is a Kenyan citizen and the biological mother to the child. She is therefore not a stranger seeking to adopt the child. She is seeking to adopt him as the biological mother. She has made this application together with her husband, the 1st applicant..

10. Secondly, the applicants have 4 other children together who brother and sisters to the child. He is therefore at home with his siblings unlike a situation where he would have to join a strange family and take time to integrate. Thirdly, this is a family that has been living together since 2012 and has integrated well since then. Even without the order of this court, their relationship has been that of father and son in a knit family.

11. The child to be adopted is not a toddler. He is a 15 year old form one student who understands what is going on. He has lived with the 1st applicant for all these years and has taken him as his father. The 1st applicant is also father to his own brother and sisters. When he spoke in court, he assured the court that he was comfortable with applicants' desire to adopt him. He told the court that it was for his own interest that the 1st applicant adopts him since he had always looked up to the 1st applicant as his father and he has taken care of him as his own child.

12. I have taken all these into account and also considered the report from the Children's Officer which favours adoption. The proposed legal guardians have also undertaken to play their role in the event the applicants are not there. This court is aware of the provisions of the Children's Act as well as the Constitution. Article 53(1)(e) is clear that every child has the right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not. The Article is also clear in Sub Article (2) that when considering matters involving a child, the welfare of the child is paramount.

13. The child's biological father's where about is unknown. Meanwhile, the 1st applicant has stepped in and filled the void left by the child's biological father and assumed parental responsibility towards the child. Taking into account all the circumstances of this case and the welfare of the minor, the fact that the applicants are husband and wife who have other children together, and further that though not a Kenyan, the 1st applicant has been resident in Kenya as a permanent residence under Certificate of Permanent Residence issued on 25th August 2018 in accordance with sections 37, 38 and 39 of the Kenya Citizenship and Immigration Act, 2011, I am satisfied that the applicants are fit and proper persons to adopt the child the subject of this application under the Children Act.

14. Consequently, the application for adoption dated 27th September 2018 is allowed. I hereby make the following orders;

a) That an order is hereby made authorizing the applicants RLM and ADON jointly to adopt DTO.

b) That JWA and MAO are hereby appointed the legal guardians of the child in the event that the applicants die, or are incapacitated by ill-health.

c) That the Registrar General be and is hereby directed to enter this adoption into the Register of Adoptions.

d) That the guardian ad litem, PKN, be and is hereby discharged.

15. Orders accordingly.

Dated, Signed and Delivered at Kajiado this 1st day of November, 2019.

E. C. MWITA

JUDGE