



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

ADOPTION CAUSE NO 16 OF 2017

IN THE MATTER OF BABY J

A B K.....1ST APPLICANT

D M T.....2ND APPLICANT

JUDGMENT

The 1st and 2nd Applicants are a male and female adult of sound mind, and are both Kenyan nationals aged 49 years at the date of the application herein. The Applicants celebrated their marriage under Kamba customary law in 1995, and solemnized their marriage under the Marriage Act on 25th February 2017. The Applicants wish to adopt a male child known as Baby J, and have moved the Court in this regard by way of an Amended Originating Summons dated 30th October 2017, brought under sections 4, 154, 156(1), 157(1), 158(1), 159 (4),(6) (7) and(8)(a), 160(1)(2) and (4), 162, 163, 164(1)and 170 of the Children Act and section 9 of the Kenya Citizenship and Immigration Act.

The Applicants sought the following orders in the said Originating Summons:

- (i) That the Applicants be authorized to adopt the child currently identified and known as Baby J.
- (ii) That the child be renamed B A K.
- (iii) That the child be presumed to be a Kenyan Citizen, and as a consequence, be entitled to the rights and benefits of Kenyan Citizen including being issued with a Kenyan passport whenever desired.
- (iv) That the Registrar General makes the appropriate entries in the Adopted Children 's Register.
- (v) That J M M and J N N be deemed to be the appointed legal guardians in respect of the child.
- (vi) That this Court do issue such further orders as are in the interests of justice.

The Applicants also filed an application by way of a Chamber Summons dated 21st August 2017, whereby they sought orders that G W N be appointed *guardian ad litem* in respect of the adoption of child Baby J, and that the Director of Children's Department do investigate the Applicants' fitness to adopt or otherwise and to file a report thereof. The said orders were granted by this Court on 30th October 2017, after an examination by the Court of the proposed guardian *ad litem*.

This Court at a hearing held on 15th January 2018 adopted a report dated 5th January 2018 by George Mukundya Kenga, the Sub-County Children Officer, Taveta Sub-County, and which was filed in Court on 15th January 2018. The Court at the same hearing also admitted as evidence a declaration report h dated 24th August 2017, and filed in Court on 18th October 2017 by the Kenya Children's Homes Adoption Society as their evidence in this adoption cause. The said report was presented by Mr. Peter Ndotono, a programme officer from the Kenya Children's Homes.

The guardian *ad litem* also presented her report at the said hearing, which report was dated 3rd January 2018 and filed in Court on 15th January 2018. This Court consequently reserved this adoption cause for judgment.

Baby J is a male child who was born around 10th May 2015 at Kibera in Nairobi. On 16th June 2015, his biological mother asked a lady by the name M to hold the baby while she went to the washroom, but she did not come back for him. M reported the matter to Kilimani Police Station, and the baby was handed over to the custody of, and committed to Thomas Barnado House for care and protection on 22nd July 2015 by the Nairobi Children Court. The supporting documents were attached to the declaration report filed in Court by the Kenya Children's Homes. In addition, a letter from the Officer Commanding the Kilimani Police Station dated 22nd January 2016 that was filed in

Court confirmed that since the incident of abandonment was reported, no person had come to claim the child.

Upon application for adoption, Baby Jeffrey was placed into, and has been in the care and possession of the Applicants since 30th March 2017, after the minor was declared free for adoption by the Kenya Children's Homes on 18th January 2017 by way of a freeing certificate number [particulars withheld]. The reports filed in Court by the Guardian *ad litem*, the Kenya Children's Homes and Taveta Sub-County Children's Officer confirm that the Applicants have bonded well with Baby J, and that the said minor is happy, healthy, and well taken care of. All of them recommended that that adoption would be in the best interests of Baby J.

Having evaluated the facts of this adoption application, I note that it is seeking a local adoption and that the Applicants are joint married applicants who are at least 25 years of age and under the age of 65 years, and who wish to adopt a male child. They have therefore met the requirement set under Section 158 (1), (2) and (3) of the Children Act. In addition, since Baby J was abandoned and no one has claimed him so far, the consent required to be given under section 158(4) of the Children Act can be dispensed with by this Court, pursuant to the provisions of section 159(1)(a)(i) of the Children Act.

This Court is also satisfied that the Applicants are qualified and able to take care of the child. I observed the Applicants with Baby Jeffrey in court, and it was evident that they had bonded well, and that the said child is well taken care of. I have therefore formed the opinion that it would be in the best interest of Baby Jeffrey to be adopted by the Applicants.

Consequently, the Applicants shall assume all parental rights and duties of the biological parents in respect of the adopted child, and shall treat the adopted child as if he was born to them. The Applicants have also been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child, and that the child shall have the right to maintenance and to inherit their property. The adoption order once made is absolute and irreversible, and the Applicants cannot give up the child owing to any subsequent unforeseen condition or other changes in the child.

I accordingly allow the application for adoption and order as follows:

1. The Applicants, A B K and D M T, are hereby allowed to adopt Baby J .
2. The child shall henceforth be known as B A K.
3. The consent of the biological mother of the child is hereby dispensed with in accordance with section 159(1)(a)(i) of the Children Act, since her whereabouts remain unknown .
4. The Registrar General is hereby directed to make the appropriate entry of B A K in the Adopted Children's Register.
5. As B A K was born and abandoned in Kenya, he is hereby declared a Kenyan citizen by birth.
6. J M M and J N N shall be the legal guardians of the child should such eventuality arise.
7. I hereby forthwith discharge the guardian *ad litem*, G W N, of her duties.

It is so ordered.

Dated, signed and delivered in open court at Machakos this 6th day of March 2018.

P. NYAMWEYA

JUDGE