



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 20 OF 2017

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

AND

IN THE ADOPTION OF BABY B I AKA M M M (MINOR)

S M M)

W N G).....APPLICANTS

JUDGMENT

1. Before me is an Originating Summons dated 28th February 2017 but filed on 28th February 2017 by S M M and W N G (herein referred to as the “1st and 2nd applicants”) seeking orders as follows:

(a) That M N N be appointed guardian ad litem.

(b) That the Director Children Services be directed to compile the requisite report on the applicant’s fitness to adopt the infant B I aka M M M.

(c) That the applicants be authorized to adopt Baby B I aka M M M an infant and who is to be known as M M M.

(d) That the child be presumed to be born in Kenya.

2. Application is supported by affidavit in support of the application for adoption together with the annexures thereof. The applicants herein who are husband and wife engaged in a monogamous marriage relationship are Kenyan citizens who started cohabiting as husband and wife under Kikuyu Customary Law sometime September 2005 and thereafter solemnized the same at the registrar of marriages office Nakuru on 23rd June 2006. Unfortunately, the couple has not been blessed with any biological child hence the motivation for the adoption herein to fill in the gap of parenthood, desire to expand their family, urge to exercise parental responsibilities, have a heir as well as share a family with a child in need of one.

3. The 1st applicant aged 49 years old is a businessman engaged in transport and farming activities within [particulars withheld] after retiring from working as a [particulars withheld] at a depot at the [particulars withheld]. On the other hand, the 2nd applicant aged 36 years old is an employee of [particulars withheld] working as a [particulars withheld] technologist earning a gross salary of 63,000/= per month. Concerning the baby the subject of this proceedings, he was found and rescued by a good Samaritan on 9th October 2009 having been abandoned in a plot within Kayole area. The good Samaritan one Esther Muthoni a passersby then alerted the police by making the abandonment report at Soweto Police Post vide OB No. xxx.

4. The baby was then referred to Imani Children’s Home for care and protection whereby his age was approximated to be one day old and subsequently named B I. On 1st September 2010, the minor was formally committed to the same institution vide Nairobi Children’s Court Protection and Care case No. 306/2010. A subsequent extension order for a further period of three years was issued on 6th June 2016 by the same court pending adoption. The baby stayed at Imani Children’s Home until 13th November 2016 when he was placed under the mandatory three months fostering care and control of the applicants pursuant to Buckner Kenya Adoption Society’s case committee and declaration of the baby free for adoption on 16th September 2016 vide certificate S/No. xxxx. Every effort to trace the biological parents and or relatives did not bear any fruit despite police investigations. Consequently, the police department through its first letter dated 9th October 2009 and 2nd letter dated 12th August 2010 confirmed that nobody had laid claim over the baby.

5. On 4th May 2017, vide Chamber Summons dated 28th February 2017, M N N was appointed as a guardian ad litem and the Director Children Services directed to file assessment and evaluation report within 45 days. Prior to the hearing, the Director Children Services, guardian ad litem and Buckner Kenya Adoption Society filed their respective reports dated 5th August 2017, 27th July 2017 and 19th April 2017 respectively thus recommending the adoption herein. Both reports confirmed that the applicants were committed Christians, morally, physically and medically fit, financially stable, caring, loving, humble and above all fully bonded with the baby since the time of placement.

6. I have considered the application herein, materials placed before me and testimony by both applicants. Before a court endeavors to make any orders touching on the affairs of a minor, the paramount consideration should be the best interests of that child. Article 53(2) of the Kenyan 2010 Constitution and Section 4 (2) and (3) of the Children's Act are quite clear on that principle. Similar position is well articulated under Article 4 of the African Charter on the right and welfare of a child. There can never be any better consideration than the best interests of a child in any action or decision making process by anybody, organization or institution touching on or regarding the affairs of a child **(See Adoption Cause No. 92/2016 Nairobi (OS) in the matter of Baby E.A (2016)je KLR).**

7. The baby herein was abandoned by an unknown person while aged one day old. Every effort to trace the relatives or parents have been futile. The adoption society has declared the child free for adoption after confirmation from the police that nobody had laid claim over the baby. Indeed, it is in the interest of the baby that he gets a home and somebody caring to look after him. There is no harm to have the child adopted for his own benefit in terms of securing basic necessities such as shelter, food, education, medical care, parental guidance, emotional, psychological and spiritual upbringing. He deserves a home for his future identity and family belonging. Since there is nobody claiming him, consent which is a mandatory requirement under Section 159(1) of the Children Act is hereby dispensed with.

8. Regarding the suitability of the adoptive parents, they are Christians who have no criminal record, physically, morally and medically fit, financially stable with a combined monthly income of about 80,000/=, owns two plots worth 800,000/=, currently building rental houses and lives in a permanent three bedroomed family house which is self-contained thus providing a conducive environment for the baby. With that social and economic background, the child is assured of basic necessities like food, shelter, education, medical care, clothing and above all inheritance. There is nothing more fulfilling than being born in a morally, spiritually, socially and economically stable family. The child will not lack basic necessities. Both parents are aged between 25 and 65 years which is the statutory age bracket pursuant to Section 158(1) of the Children Act. Being Kenyan citizens, the adoption herein is qualified to be a local adoption.

9. During the hearing, the baby appeared jovial and very close to his adoptive parents which is a demonstration of positive integration and bonding. It is my finding and sufficiently so persuaded that it is in the best interests of the baby that the adoption herein vide originating summons dated 28th February 2017 be allowed and therefore make orders as follows:

- (a) That the applicants herein be and are hereby authorized to adopt baby B I who henceforth shall be known as M M M.**
- (b) That the consent of the biological parents be and is hereby dispensed with.**
- (c) That the baby's date of birth shall be 9th October 2009 and place of birth Kayole Nairobi County Kenya.**
- (d) That the Registrar General do make appropriate entries in the adopted children's register in respect of baby M M M.**
- (e) That the Director Immigration do to issue the child with a Kenya passport.**
- (f) That the guardian ad litem herein is hereby discharged.**
- (g) That N M W and A W G be and are hereby appointed as the legal guardians in the event of death or eventuality befalling the applicants.**

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF MAY, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

No appearance.....Counsel for the applicants

Edwin.....Court Assistant