



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 98 OF 2017

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

AND

IN THE ADOPTION OF BABY R M (MINOR)

I W W)

E M W).....APPLICANTS

JUDGMENT

1. I W W and E M W (hereinafter referred to as the "1st and 2nd applicants") moved this court through an Originating Summons dated 3rd July 2017 but filed on 4th July 2017 seeking orders among them; authority to adopt baby R M henceforth to be referred to as A R W; that consent of the baby's biological parents be dispensed with the same having abandoned her at birth; that the Registrar General do make appropriate entries in the adoption register and that the court do make any other relief it may deem fit to issue.

2. Application is supported by an affidavit deposed by the applicants jointly on the 3rd day of July 2017 and filed on 4th July 2017. The applicants who are Kenyan citizens and staunch Christians celebrated their marriage under the Marriage Act Cap 150 Laws of Kenya on 28th October 2006 at the registrar of marriages office Nairobi. The couple has been blessed with two biological twins although one died leaving a twin brother by the name of D W now aged 9 years old. The first applicant born 1974 is an IT expert working with [particulars withheld] while the 2nd applicant born 1973 is a monitoring and evaluation consultant a self-employed venture after working for various organizations among them [particulars withheld] Luanda Angola.

3. The urge and motivation to adopt baby R M was prompted by the desire and or need to give the needy child care and protection; the need to accord their son D a sister; the urge to grow and expand their family and lastly to give back to God and the belief that children are a gift from God.

4. Regarding the minor herein, she was presumably born on 15th April 2014 but later on abandoned inside a house by her biological mother who left their rental house at [particulars withheld] Estate within Nakuru for unknown destination for a period of two months never to return back. Neighbors who took care of the baby for two months hoping that the mother would return gave up and decided to report to the area Chief who in turn reported to Nakuru Central Police Station on 15th June 2015 vide OB No. [Particulars withheld]. The baby was subsequently referred to Haven of Hope Baby Centre on the same day for care and protection and thereafter a formal committal order issued by Nakuru Children's Court on 8th July 2015.

5. Every effort to trace the biological parents and or known relatives bore no fruit as evidenced by police effort through their 1st letter dated 20th June 2015 and 2nd letter dated 5th January 2016. Consequently, the child was declared free for adoption by Buckner Kenya Adoption Society pursuant to their case committee sitting held on 8th July 2016 which resolved that the child was available (free) for adoption culminating to the issuance of a certificate S/No. [particulars withheld]. The baby was on 7th November 2016 released and placed under the mandatory three months foster care and control of the applicants who have since then taken care of her after signing the necessary placement agreement of even date pending adoption.

6. On 12th October 2017, S K M was appointed as guardian ad litem to the minor in compliance with Section 160 of the Children Act and the Director Children Services ordered to file evaluation and assessment report within 45 days pursuant to a Chamber Summons dated 3rd July 2017 supported by an affidavit deposed by the applicants on 3rd July 2017, a consent by the proposed guardian and affidavit of fitness sworn by A W W. Prior to the hearing, the Director Children Services, guardian ad litem and Little Angels Adoption Society filed their respective evaluation and investigation reports dated 16th January 2018, 23rd November 2017 and 26th August 2016 respectively thus recommending

the adoption.

7. I have considered the application herein, materials placed before me and testimony of the applicants. Issues for determination are:

- (a) Is baby R M available for adoption**
- (b) Are the applicants qualified to adopt the baby**
- (c) Is it in the baby's interest to allow the adoption**

8. According to the testimony of the applicants and reports filed by the children department, guardian ad litem and adoption society, the baby herein was abandoned inside their house by her biological mother who disappeared never to return. Every effort to trace the mother by the police bore no fruit. The child was rescued by good Samaritans being neighbors to the baby's mother. She was subsequently declared free for adoption. To that extent consent is not necessary and the same is hereby dispensed with pursuant to Section 159 (1) of the Children's Act. Indeed the child is in need of protection and care. It is in her interest and benefit that she finds a home to identify with, good medical care, education, clothing, food, moral and psychological support. She needs a sense of identity and belonging just like any other member of society. Under Article 14 (4) of the Constitution, any child who appears to be less than eight years of age, and whose nationality and parents are not known is presumed to be a citizen by birth. The baby herein is therefore presumed to be a Kenyan entitled to all rights like any other Kenyan citizen.

9. Under Article 53(2) and Section 4 (2) (3) of the Children's Act, before a court of law ventures to make any order affecting the affairs of a child, the cardinal consideration should be the best interests of the child. Since placement, the child has enjoyed parental care, education, food, shelter in a very conducive environment at High Ridge Parklands estate, medical care, emotional, moral and psychological support courtesy of the applicants. I am therefore satisfied that the baby herein is available for adoption and it is in the interest of the baby that she is adopted.

10. Regarding the suitability of the applicants, the two are Kenyan citizens aged 43 and 44 years respectively. The age bracket is well within the statutory age requirement of not less than 25 or more than 65 years old in compliance with Section 158 (1) of the Children's Act. By virtue of their citizenship, the adoption herein qualifies to be a local adoption.

11. Both stakeholders' reports recommended the applicants as being physically and medically fit, being Christians with no criminal record, financially stable earning a combined monthly income of 950,000/= per month, owns a farm tree in Eldoret Turbo area, a rental house at Athi River estate generating a monthly rent income of 40,000/= and three plots in Juja measuring ¼ each. With this economic background, the child is assured of economic support, economic empowerment and inheritance in the future, good medical care, shelter, food, clothing and family lineage as a form of identity. Ultimately, the applicants have met the requisite conditions and requirements to adopt the baby herein whom they have integrated and bonded with as evidenced from their interaction and closeness while in court during the hearing.

12. For the above reasons stated, this court is convinced and sufficiently persuaded that it is in the best interest of the baby herein that the prayers sought be allowed and therefore do make orders as follows:

- (a) That the applicants herein be and are hereby allowed to adopt baby R M who henceforth shall be called A R W.**
- (b) That the consent of the biological parents of baby R M be and is hereby dispensed with.**
- (c) That the Registrar General do make appropriate entries in the adopted children's register in respect of baby A R W.**
- (d) That the baby's date of birth shall be 15th April 2015 and her place of birth [particulars withheld] Estate Nakuru County Kenya.**
- (e) That the Director Immigration be and is hereby authorized to issue the child with a Kenya passport.**
- (f) That the guardian ad litem herein is discharged.**
- (g) That S N M M be and is hereby appointed as the legal guardian 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:

Mr. Mwangi holding brief for OdhiamboCounsel for the applicant

Edwin.....Court Assistant