



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

ADOPTION CAUSE NO. 2 OF 2018

IN THE MATTER OF THE CHILDREN'S ACT

(ACT 8 OF 2001)

IN THE MATTER OF AN APPLICATION FOR AN ADOPTION ORDER IN RESPECT OF BABY A

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION

BY

SAJG..... APPLICANT

RULING

The applicant hereinafter referred as S.A.S filed an originating summons pursuant to section 154, 156(1), 157(1), 158(1) 2(b) and 4(a), 159(a), 6, 7, 8, 160(1) and 170 of the Children's Act No. 8 seeking to adopt the infant by the name Baby A.

The grounds in support of the application were that the mother abandoned her at Gtiharai area on or about 20th December 2015.

In support of the application is an affidavit deposed by the applicant that if an adoption order is made she is suitable under the provisions of the Children's Act to protect and care for the minor.

According to the affidavit the child was placed under the care and protection of Happy Life Children's Home. The local adoption Agency Buckner Kenya which is licensed to deal with adoption issues effectively conducted an enquiry on the suitability of the applicant to be granted the adoption order.

In their report dated 3rd March 2018 it is clear that the applicant do meet the legal threshold of being granted adoption orders in her favour for a the best interest of the child.

According to the report the circumstances surrounding the minor are that she was abandoned by the birth parents and hence ceased to be a member of the original family.

The applicant has further deposed that her husband has consented that they adopt the child. They have appointed their sister identified as I.A. M and a brother in-law namely J.M, to be the child's legal guardians in the event of death or other eventuality on the part of the applicant before the minor attains the age of maturity. The couple jointly have also consented to be legal guardians to the minor.

There is a report from the Directorate of the Children Services dated 4th April 2018 identified essential requirements in adoption application and using a balance sheet approach recommended the applicant be allowed to adopt the child. The report expressed that it is in the best interest of the child that she be adopted by the applicant.

Discussion

I have considered the originating summons and the material placed before me in support of the summons.

In the matter under discussion the case is extremely important in view of the fact that the child was abandoned by her biological mother at a neighbour's house. She has not been seen or heard including up to the time of commencement of these proceedings. The constitution under Article 53 provides for the rights and protection of the children. It emphasizes that the child's best interests are of paramount importance in

every matter involving the child.

Under section 158 of the Children's Act the threshold to be met before an adoption order is made are clearly stipulated. These include the application may be lodged by a single applicant or jointly by both spouses.

The applicants must have attained the age of twenty-five old and held at least 21 years older than the child but not more than 65 years old or is a relative of the child or is the mother or father of the child. Further at the time of adoption due regard should be given to compelling circumstances which will not justify the making of the adoption order.

From the detailed reports placed before this court by the Children Department and Buckner Adoptive Agency the applicant does not fall in any of the exclusion clauses under section 156 of the Children's Act which disqualifies one to be granted adoption orders.

The Children Act under section 156 provides for the minimum age of the child to be adopted not to be less than six years old. Secondly, the child must be declared free for adoption by a licensed and gazetted Adoption Agency.

In the present application Buckner Adoption Agency is a licenced legal entity provided for in section 156 of the Act. In the report filed in court by the Agency it is confirmed that a case committee minutes of 29th September 2017 resolved that the child is free to be adopted by an adoptive parent (s).

The other issue which arose in this adoption cause is in respect with the provisions under section 159 of the Children Act on consent of the biological parents to be sought before an adoption order is made and the power of the court to dispense with it where circumstances permit.

Having considered the materials annexed to the summons and the two reports by the children's officer and the local Adoption agency – Buckner this court concludes that the child minor falls within the provisions section 159 (1) (a), (i) (ii) of the Act. It is not in dispute that the child was abandoned by the biological mother. The whereabouts and existence of the father remains unknown. Since the abandonment of the child at a neighbour's house nothing has been heard of the mother or any next of kin to claim parental rights of the child.

Consequently, in this adoption cause the requirement of consent of the birth parents or next of kin is hereby dispensed with in making this adoption order. The fundamental principle in granting orders of adoption is the best interest and welfare of the child is of paramount importance.

In our country this is a constitutional imperative under Article 53 of the constitution and section 4 of the Children's Act. It is also the rubric of law under the Children Act No. 8 of 2001 in part II and III where a set of rights and parental responsibilities under the principle of best interest are expressed in very clear language. However, it must be realised that the list is not exhaustive and shall depend on circumstances of each case.

Giving due consideration to the present application and subject to interest and welfare principle I am satisfied that the best interest of the subject minor in these proceedings would be better served by granting this adoption order in favour of the applicant. Accordingly, the orders sought in originating summons dated 5th March 2018 in terms of prayer No. 1, 2, 3, 4, 5, 6 and 7 be and are hereby granted by this court.

Costs of this application be in the cause.

Dated, delivered and signed in open court at Kajiado on 2nd May, 2018.

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R. NYAKUNDI

JUDGE

Representation:

The Applicants – present

Mr. Kimenyi – counsel for the applicant

Legal Guardians - present

Mr. Mateli - Court Assistant