



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
ADOPTION CAUSE NO. 177 OF 2017
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
AND
IN THE ADOPTION OF E L S (MINOR)
M K B)
E A K).....APPLICANTS

JUDGMENT

1. M K B and E A K hereinafter referred to as the 1st and 2nd applicants respectively, came to court on 13th December 2017 by way of originating summons pursuant to Sections 154, 156(1), 157(1), 158(1) (d), 159 (1) (a) (i) , (4), (6), (7), 160 (1), (2), (3), (4), 161, 163, 164 (1) and 170 of the Children Act No. 8 of 2001 and Section 24 of the interpretation and general provisions Act Cap 2 Laws of Kenya seeking orders:

- (a) That the Director Children's department, Ministry of Labour, Social Security and Services investigate the applicants' fitness to adopt and file a report.**
- (b) That the applicants be authorized to adopt E L S henceforth to be known as E K B**
- (c) That the Child be presumed to be A Kenyan Citizen**
- (d) That the child's date of birth be 15th April 2003 and place of birth be Kakamega**
- (e) That the registrar General be directed to enter the adoption in the a adopted Children's Register**
- (f) That the Director immigration be authorized to issue the Child with A Kenyan passport**
- (g) That K V K be appointed the legal guardian of the child in the event of death or incapacity of the applicants before the child is of age or independent.**

2. Application is supported by affidavits in support separately sworn by the applicants on 8th December 2017 and statement of particulars of even date signed jointly by the applicants. Vide Chamber Summons dated 8th December 2017, W A E was appointed guardian ad litem on 22nd February 2018.

3. The applicants are Kenyan citizens who solemnized their monogamous marriage in the state of Nevada United States of America on 4th February 2015 after courting for about 4 years. They have been cohabiting as husband and wife while residing in the USA where they are currently working. They have been blessed with one biological child known as L K B born 9th December 2014.

4. The 1st applicant is a holder of a Master's degree in Computer Science and currently working as data analyst with [particulars withheld] earning the equivalent of Kshs.650,000/= per a month. The second applicant is a holder of Bachelor's degree in Nursing and currently working as a clinical director at [particulars withheld] also earning the equivalent of Kshs.1,100,000/= per month.

5. Concerning baby E L, he is an orphan born on 15th April 2003 to E S L and S M K who died on 15th June, 2006 and 14th July, 2008

respectively. Copies of their death certificates were attached as proof. Upon their demise, Baby E was left in the care and control of his maternal uncle K V K who has since relocated with his family to Copen Hagen Denmark thus leaving the baby under the care of his maternal Aunt the 2nd applicant being a sister to the baby's deceased mother. The applicants assumed parental responsibility of the baby from the year 2015.

6. With the consent of the maternal uncle K K who swore an affidavit dated 8th September 2017, the 2nd applicant together with her husband the 1st applicant opted to adopt the baby for the sake of providing a home and parental care.

7. Vide case committee sitting held on 20th September 2017 by Kenya Children's Home adoption society, the child was declared free for adoption and a declaration certificate S/No. 369 issued pursuant to Section 177 (7) (b) and 136 (1) of the Children's Act 2001. During the hearing, both applicants pleaded with the court to adopt the baby. Prior to the hearing, the guardian ad litem, children department and Kenya Children's Home Adoption Society filed their respective reports recommending the adoption.

8. I have considered the application herein, supporting affidavit, statement of particulars in support of the application, testimony by both applicants and various materials placed before the court. Issues for determination are:

(a) Is baby E L S available for adoption;

(b) Are the applicants suitable for purposes of adopting the baby herein;

(c) Is it in the best interests of the baby that he be adopted.

9. Under Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children's Act, the law requires that before any decision or order concerning a child is made, the best interests of a child must be taken into account as a primary consideration.

10. The baby herein who is an orphan was left under the care of his maternal uncle who has also relocated to Denmark leaving him under the care of his late mother's sister and her husband (applicants)

11. The only close relatives he knows are the applicants. At his age, he needs a home, food, clothing, medical care, education and other essentials. The applicants who are Christians with no criminal record, are financially stable with a combined income of over 1.6 million per month and have a home at Langata Estate which is a conducive environment for child development are willing to help the minor for his benefit. They have offered to adopt the baby who has no parent and therefore in need of parental love, guidance and support. The child if adopted will be assured of basic provision of the aforementioned basic necessities and above all an opportunity to inherit.

12. This being a kinship adoption, the same automatically qualifies the test of being a local adoption. The baby if adopted will have a sense of belonging to people he is already familiar with and therefore reclaim his parental love and guidance which his biological parents would have provided if they were alive. The child is above six weeks and below 18 years in compliance with Section 156 (1) of the Children's Act. He is a Kenyan born in Kenya and has been under the continuous care and control of the applicants for a minimum of 3 months preceding this application after being declared free for adoption in compliance with Section 157 (1) of the Children's Act. To that extent, the baby is available for adoption.

13. Regarding the applicants suitability, they are Kenyan citizens aged 36 years and 39 years respectively which is perfectly within the minimum and maximum age bracket of between 25 and 65 years old pursuant to Section 158 (1) of the Children's Act. Both applicants have been recommended vide stake stakeholders' reports compiled and filed by Children's department on 9th March 2013, Kenya Children's Homes Adoption Society's report filed on 13th February 2018 and guardian ad litem's report filed on 11th April 2018. They are Christians, mentally, physically, financially stable and have no criminal record. The applicants have met the requisite requirements before adopting the baby.

14. As to whether the adoption of the baby herein is in the best interest of the baby, it is apparent that the baby being an orphan is in dire need of basic necessities like food, clothing, shelter, education and health besides parental love and guidance. The applicants are people of means with stable financial standing and morally and socially upright. The baby's needs will definitely be met through their care. They need an opportunity to be close with the baby.

15. In compliance with Article 53 (2) of the Constitution, Section 4 (2) (3) of the Children's Act and Article 4 of the UN Convention on the rights of a child, it is in the best interests of the baby herein that he be adopted. During the hearing, the baby appeared to have internalized and fully integrated with the adoptive parents. He appeared healthy and sat closely to the adoptive parents a revelation that the child has fully bonded with the applicants and therefore feels at home and comfortable in the applicants' company.

16. Accordingly, application herein is allowed with orders:

(a) That the applicants herein be and are hereby ordered to adopt baby E L S who henceforth shall be known as E K B.

(b) That the child's date of birth shall be 15th April 2003 and his place of birth Kakamega, Kenya.

(c) That the Registrar General be and is hereby directed to enter the adoption in the adopted children's register.

(d) That the Director Immigration be and is hereby authorized to issue the child with a Kenyan passport.

(e) That the guardian ad litem be and is hereby discharged.

(f) That K V K be and is hereby appointed as a legal guardian in the event of death or incapacity of the applicants herein.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 5TH DAY OF JULY, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

M/S Kathungu H/B for Mrs. Kiguatha.....Counsel for the applicants

Edwin.....Court Assistant