



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
ADOPTION CAUSE NO. 135 OF 2017
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
AND
IN THE ADOPTION OF BABY P N (ALIAS D M) (MINOR)
K A O
G M O.....APPLICANTS

JUDGMENT

1. 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, the applicants herein K A O and G M O (hereinafter referred to as “the 1st and 2nd applicants respectively”) sought the following orders:

- (a) That M W M be appointed guardian ad litem.
- (b) That the applicants be authorized to adopt baby P N (alias D M) who henceforth shall be known as P N H N O.
- (c) That Director Children Services investigate the applicants’ fitness to adopt and file a report.
- (d) That the child be presumed a Kenyan citizen by birth.
- (e) That the child’s date of birth be 11th July 2016 and the place of birth at Nairobi.
- (f) That the Registrar General be directed to enter the adoption in the adopted children register.
- (g) That the director immigration be authorized to issue the child with a Kenyan passport.
- (h) That D O be appointed the legal guardian of the child in the event of the death or incapacity of the applicants before the child is of age or independent.
- (i) That the court be pleased to make any further orders it deems necessary.

2. Application is premised on a statement jointly signed on the 18th September 2017 and affidavits in support separately deposed by the applicants on the same day.

3. The applicants who are Kenyan citizens by birth celebrated their monogamous marriage under the African Christian Marriage Act Cap (151) Laws of Kenya on 6th may 2001 at PCEA Loresho Church. They have not been blessed with any biological child hence the reason for this adoption and the need to provide a home to someone in need. They have however adopted another baby known as F O D. The 1st applicant is a medical representative working with [particulars withheld] as a commercial head for Eastern and Southern Africa earning a monthly salary of Kshs.400,000/=. The second applicant is also a medical sales representative working with [particulars withheld] earning a monthly salary of Kshs. 230,000/=.

4. The minor herein was born out of wedlock by parents who were both students. Upon delivery, the biological father disowned the baby thus running away from responsibility. Aggrieved by the turn of events, the mother then a university student decided to offer the baby for adoption to New Life Home on 18th July 2016. The baby was formally committed to New Life Home October 2016 vide P & C case No. 310/16 Milimani Children's Court. Thereafter, he was declared free for adoption on 28/2/2017 vide declaration certificate S/No. 00201. The applicants signed a care agreement dated 24/3/2017 upon which the baby was released to them as foster parents for care and control for a mandatory 3 months period preceding the adoption herein.

5. Vide Chamber Summons dated 18th September 2017 brought under Section 160(1) of the Children's Act, M W M was appointed guardian ad litem and director children services directed to file assessment and evaluation report within 45 days.

6. Prior to the hearing, the director children services, Change Trust Adoption Society and guardian ad litem filed their respective assessment and evaluation reports dated 14th March 2018, 28th February 2018 and 16th November 2017 respectively.

7. I have considered the application herein, affidavits in support sworn on 18th September 2017 separately by the applicants and statement of particulars, supporting documents and testimonies by the applicants. Issues for determination are:

(a) Whether the baby is available for adoption;

(b) Whether the applicants are suitable;

(c) Whether it is in the best interest of the baby that he be adopted.

8. The baby herein was offered for adoption by her mother upon delivery due to her inability to take care of him while being a student in university. The biological father also a student disowned the baby thereby avoiding responsibility. The mother signed a consent to the effect that she understood the consequences of offering her baby for adoption.

9. The baby who is a Kenyan citizen having been declared free for adoption on 28th February 2017 was placed under the care and control of the adoptive parents for bonding and has been in their custody since 24th March 2016 to date. The baby's biological mother has given the requisite consent dated 18th July 2016 in accordance with Section 158 (4) (a) of the Children's Act. To that extent the baby is available for adoption.

10. Concerning the suitability of the applicants, the 1st applicant is aged 44 years and the 2nd applicant 43 years which age falls within the minimum 25 years and a maximum 65 years provided under Section 158 (1) of the Children's Act. According to the stakeholders reports, the applicants are staunch Christians worshipping at Nairobi Chapel, they are hardworking and responsible parents who have no criminal record. Economically, they have a combined monthly income of over 600,000/= . They have rental income from a house in South B and an apartment at Embakasi earning them a total sum of Kshs.130,000 as rent per month.

11. They are Kenyan citizens thus qualifying the adoption herein to be a local adoption. Their relatives have approved the process and are indeed supportive. There is no doubt that the applicants have met the necessary conditions to adopt the baby.

12. Is it in the best interests of the baby that he be adopted? Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children Act clearly underpins the best interests of a child as the primary consideration before any court, organization or institution decides to make any decision affecting the affairs of a child.

13. In this case the baby was rejected by both biological parents upon delivery. He was offered to a children's home by the biological mother who expressed her unwillingness to bring him up while studying. Since placement, the baby has fully bonded with the adoptive parents who have taken care of him like their biological baby. The applicants reside in Upperhill estate in a three bedroomed house which provides a conducive environment for growth.

14. The baby appeared jovial while in company of the adoptive parents a reflection of positive bonding. The baby needs a home and a sense of identity. Socially and morally, the baby has an opportunity to gain in the hands of the adoptive parents. He has a bright future in terms of education provision of basic necessities like food, shelter, medical care and clothing.

15. I am convinced that the baby herein will benefit if adopted by the applicants. Accordingly, the application herein is allowed with orders that:

(a) That the applicants be and are hereby authorized to adopt baby P N alias D M henceforth to be known as P N H N O.

(b) That the baby be and is hereby presumed to be a Kenyan by birth.

(c) That the child's date of birth shall be 11th July, 2016 and place of birth Nairobi, Kenya.

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

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

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

(g) That D O a brother to the 1st applicant be and is hereby appointed as a legal guardian incase of death or incapacitation of the applicants.

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