



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 51 OF 2017

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

AND

IN THE ADOPTION OF J R (MINOR)

Z M O)

E M).....APPLICANTS

JUDGMENT

1. On 21st April 2017, the applicants herein Z M O and E M V filed an originating summons dated 21st April 2017 under Section 154 of the Children Act 2001 seeking various orders inter alia; authorization to adopt baby J R; that the consent of the biological mother be dispensed with; that the baby be declared a Kenyan citizen; that upon making adoption orders, the child be known as R O M; that the registrar general to make appropriate entry in the adopted children's register; that AB guardian ad litem be discharged and K N be appointed as legal guardian.

2. Application is premised on a joint affidavit sworn by the applicants on 21st April 2017 and a statement of particulars jointly signed the same day. Vide chamber summons dated 21st April 2017 supported by a consent of the proposed guardian ad litem and affidavit of fitness sworn by W O on the same day, AB was appointed as a guardian ad litem on 15th June 2017.

3. The applicants herein who are Kenyan citizens by birth started staying

together as husband and wife the year 2008 and thereafter formalized their monogamous marriage under the Marriage Act Cap 150 on 19th March 2010 at the Registrar's Office Nairobi. The 1st applicant is a Biochemistry graduate of Kenyatta University currently working as a medical representative with [Particulars Withheld] Co. The second applicant is also a Bachelor of Education graduate from Jomo Kenyatta University and currently teaching at [Particulars Withheld] High School.

4. The motivation to adopt the baby is born out of the desire to have a complete family considering that they have not been blessed with a biological child and also the urge to provide for a needy child.

5. Concerning the baby, he is presumed to have been born sometime on the 19th December 2014 to C K and N V who are close relatives. Upon delivery at Nambale District Hospital, the biological mother intimated to the medical staff that she was not ready to take the baby home as he was born out of an incestuous relationship which is a taboo according to Maragoli culture.

6. Consequently, the nurses Informed Child Welfare Society of Kenya that the mother of the baby had offered to give out the child for adoption. Upon the adoption society staff having a discussion with the biological parents of the baby, they both agreed to give out the child and thereafter signed necessary consents on 2nd February 2015. The child was rescued the same day and taken to Rehema Pefa Children's Home and thereafter a report was

made to the children department. On 18th March 2015, the child was formally committed to Rehema Pefa Children's Home vide Kakamega children's court protection and care case No. [Particulars Withheld]. The child was declared free for adoption vide certificate S/No. [Particulars Withheld] on 12th November 2015 by Child Welfare Society of Kenya.

7. Prior to the hearing, the director children services, child welfare society of Kenya and guardian ad litem had filed their respective

assessment and evaluation reports dated 26th September 2017, 16th November 2016 and 7th May 2018 recommending the adoption. Both stakeholders described the applicants as staunch Christians, financially stable, loving and caring, hardworking and responsible people with no criminal record.

8. I have considered the application herein, affidavits in support, statement of particulars, testimonies by both applicants and materials placed before the court. The issues that fall for determination are; whether the baby herein is available for adoption; whether the applicants are suitable to adopt the baby and lastly; whether the adoption is in the best interests of the baby.

9. The minor herein was given out by both parents who unfortunately sired him out of an incestuous relationship. It is alleged that according to Maragoli customs, it is a taboo for close relatives to engage in sex and give birth to a child. The minor was given out to the children's home for protection and care immediately after delivery. He was declared free for adoption on 12th November 2015 and immediately placed under foster care, control and custody of the applicants.

10. The baby is a Kenyan by birth and who was declared free for adoption

after attaining a minimum age period of six weeks in compliance with Section 156 (1) and 157 (1) of the Children's Act. Necessary consents were obtained from the biological parents on 2nd February 2015 pursuant to Section 158(4) (a) of the Children's Act. To that extent the baby is qualified to be adopted.

11. Concerning the suitability of the adoptive parents, they are both Kenyan citizens aged 36 and 35 years respectively hence falls within the age bracket criteria of 25 to 65 years old a prerequisite age requirement under Section 158 (1) of the Children's Act. According to the stakeholders evaluation and assessment reports, the applicants are staunch Christians worshipping at Deliverance Church Juja, resides in a two bedroomed self-contained residential house within [Particulars Withheld], socially and morally upright with no criminal record. They are also economically stable with a combined monthly income of 215,000/=. With this background, the child is assured of positive parental love, mentorship and guidance, social, moral, spiritual and psychological growth. He is also assured of basic necessities like food, shelter, clothing, medical care, education, some form of generational identity, family belonging and an opportunity to inherit.

12. It is a constitutional imperative under Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children Act that before any decision is made on any issue concerning a child, the best interests of a child must be the paramount consideration. Given the background and circumstances under which the baby was born declaring him as a bad omen to the community, anything is possible including death thus endangering his life.

13. It is in the best interest of the baby that he be removed from a hostile environment which is not ready to accept him like any other normal child. The best option is to find him a home which he already has. The adoptive parents have exhibited excellent love to the baby by providing necessary support. The baby has fully bonded with the adoptive family hence to separate him will be a grave injustice to his future and livelihood. During the hearing, the baby was sandwiched between the applicants, very jovial running in and about the court room a sign of a healthy baby who is not withdrawn due to stress. It is my view and opinion that the best interests of the baby will be served well upon adoption. This being a local adoption, the baby will be within this court's jurisdiction in case of any need for protection.

14. Accordingly, application herein is allowed with orders:

(a) That the applicants be and are hereby authorized to adopt baby JR who henceforth shall be known as ROM.

(b) That the baby's date of birth shall be 19th December 2014 and place of birth [Particulars Withheld] County, Kenya.

(c) That the Registrar General shall enter the adoption in the adopted children's register.

(d) That the Director Immigration shall issue the child with a Kenyan passport.

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

(f) That KN a relative to the applicants be and is hereby appointed as legal guardian in the event the applicants die or are incapacitated.

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

J.N. ONYIEGO (JUDGE)

In the presence of:

Mrs. Odia H/B for Nyaswenta.....Counsel for the applicants

Edwin.....Court Assistant