



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 140 OF 2017

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

AND

IN THE ADOPTION OF BABY O A (MINOR)

E V O O)

P A O) APPLICANTS

JUDGMENT

1. The applicants herein E V O O and P A O (hereinafter referred to as the "1st and 2nd applicants respectively" came to court on 22nd September 2017 vide originating summons dated 20th September 2017 seeking the following orders: that S O O be appointed as guardian ad litem; that the Director Children Services to investigate applicant's petition to adopt and file a report; that the applicants be authorized to adopt baby O A henceforth to be known as O A O; that the child be presumed to be a Kenyan citizen by birth; that the registrar general be directed to enter the adoption in the adopted children's register; that the director immigration be authorized to issue the child with a passport and lastly; any other relief the court may deem fit.
2. Application is based on affidavits in support separately sworn by the applicants on 20th September 2017 and a joint statement of particulars of even date. Pursuant to a chamber summons dated 20th September 2017 filed together with the originating summons in compliance with Section 160(1) of the Children's Act, S O O was appointed as guardian ad litem on 9th November 2017 and the director children services directed to file assessment and evaluation report.
3. The applicants herein who are Kenyan citizens by birth started cohabiting as husband and wife customarily sometime the year 1996 but later formalized their marriage on 11th December 2004 under the African Christian Marriage and Divorce Act Cap 151 at AIC Milimani Church Nairobi. They have been blessed with four biological daughters namely LO 25 years old, DO 17 years old, AO 11 years old and KO 7 years old.
4. Professionally, the 1st applicant now 50 years old is a holder of a doctorate degree in economics and is currently working with [particulars withheld] as a Programmes Manager. The second applicant aged 45 years old is a [particulars withheld] engaged in self employment. The couple have a joint monthly income of about Kshs. 500,000/=.
5. The desire to adopt the baby herein has been prompted by their upbringing revolving around love for children, the need to share their love and affection to a less fortunate baby, the urge to have another baby in the family and more particularly a male child now that they have daughters only.
6. Regarding the baby herein, he was found on 5th January 2015 having been abandoned in Majengo area within Kajiado Township while aged 3 days. Abandonment report was made at Kajiado Police Station vide OB No. 42/08/01/2015 and thereafter the baby was rushed to Kajiado County hospital for treatment and care. Subsequently, the matter was reported to Kajiado Children's office. On 23rd January 2015, the baby was formally committed to Mahali pa Maisha Children's Home by Kajiado Children's court under protection and care case No. 1/2015.
7. According to the police investigations vide their first letter dated 20th January 2015 and final letter dated 26th October 2015, nobody has laid claim over the baby thus creating an avenue for the adoption process to be completed. The baby was declared free for adoption on 3rd November 2015 vide certificate S/No. 0070 by Change Trust adoption society and subsequently placed under the custody of the applicants for the mandatory three months period for care and control after signing a placement agreement on 11th February 2017.

8. Prior to the hearing, the guardian ad litem, director children services and Change Trust Adoption Society filed their respective investigative and evaluation reports dated 5th December 2017, 11th March 2018 and 31st January 2017 recommending the adoption. The said reports positively recommended both applicants as having met the requisite conditions for adoption describing them as staunch Christians, hardworking, financially stable, socially and morally upright and responsible parents with proven record of good parenting. During the hearing, the applicants pleaded with the court to allow their application.

9. I have considered the application herein, affidavit in support, statement of particulars, reports by various stakeholders and testimony from both applicants. Issues for determination are:

- (a) Is baby O A available for adoption
- (b) Are the applicants suitable to adopt baby O A
- (c) Is the adoption in the best interests of the baby

10. The baby herein was found having been abandoned at Majengo area within Kajiado Township in Kajiado County. Later, he was taken to Mahali pa Maisha Children home where he was formally committed by the Children's Court Kajiado on 23rd January 2015. Despite every effort by the police to look for the parents and or relatives as evidenced from their first and 2nd letters dated 20th January 2015 and 26th October 2015 respectively, nobody has come forward to claim the baby. To that extent consent pursuant to Section 159(1) of the Children Act is dispensed with.

11. Having been declared free for adoption on 3rd November 2015 and then placed under the mandatory three months custody for care and control of the applicants on 11th February 2017 where he has been to date, the baby has enjoyed parental love, care and guidance which is the foundation of any responsible child. In accordance with Section 156(1) of the Children's Act, the child is more than six weeks being the minimum age limit before a adoption.

12. Under Section 157 (1) of the Children's Act, any child who is a resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya. Provided that no application for an adoption order shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants as the case may be evaluated and assessed by a registered adoption society in Kenya. Under Article 14 (4) of the Constitution, a child found in Kenya whose age is appearing to be less than 8 years and whose nationality or parents are not known is presumed to be a Kenyan citizen.

13. The above requirements having been met and taking into account the best interests of the baby which is a primary consideration before making any decision concerning a baby under Article 53 (2) of the Constitution, it is my finding that the baby has met necessary conditions before adoption. Accordingly, it is my finding that the baby is available for adoption.

14. As to whether the applicants are suitable to adopt the baby, the two are Kenyan citizens aged 56 and 45 years respectively in compliance with Section 158 (1) of the Children's Act which sets 25 years as the minimum age and 65 years as maximum age limit. They are dedicated Christians of right sexual orientation and have no criminal record. They are also financially stable with a combined income of above 500,000/= per month, owning a rental house at South C, have a plot in Kitengela, owns agricultural land in Busia and a five bedroomed house located in Syokimau a serene and conducive environment. Copies of bank statements, employment verification records, and certificate of good conduct were availed as proof of the existence of the said facts, property and income. I am satisfied that the applicants have met the necessary requirements for them to qualify as adoptive parents.

15. Is it in the best interests of the baby to be adopted? Article 53 (2) of the Constitution and Section 4 (2) and (3) of the Children's Act are the pillars in underscoring consideration of the best interests of a child principle before making any decision concerning a child. Same position is amplified by Articles 20 and 21 of the United Nations Convention on the rights of a child (UNCRC).

16. The baby was abandoned by unknown person and subsequently rescued by good Samaritans. He has no known relative. He has found a home with a loving and caring adoptive family. The baby needs somewhere to call home. He needs shelter, food, clothing, education, medical care and above all parental love, care and guidance all of which are available at the applicants' home. With a firm Christian foundation, the baby is assured of a morally and socially upright upbringing. The baby is equally assured of provision of basic necessities inter alia food, shelter, clothing, medical care and education considering the financial stability the adoptive parents are endowed with. This is also a guarantee for inheritance. The child has fully integrated with the adoptive parents if their closeness while in court is anything to go by.

17. Taking into consideration all circumstances surrounding the adoption proceedings herein and this being a local adoption, and the applicants having met all necessary requirements before adoption of the minor, I am sufficiently persuaded to allow the application with the following orders:

- (a) That the applicants herein be and are hereby authorized to adopt baby O A who henceforth shall be known as O A O.
- (b) That the consent of the biological parents be and is hereby dispensed with.
- (c) That the baby's date of birth shall be 5th January 2015 and place of birth Majengo within Kajiado County, Kenya.
- (d) That the Registrar General shall enter the adoption herein in the children's register.

(e) That the Director Immigration do issue the child with a Kenyan passport.

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

(g) That Rev. S A N a church minister and friend to the applicants be and is hereby appointed as legal guardian in the event 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 Wangeci.....Counsel for the applicants

Edwin.....Court Assistant