



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 34 OF 2017

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

AN

IN THE MATTER OF APPLICATION FOR ADOPTION OF BABY MJ (also known as MS)

SJM 1ST APPLICANT

VERSUS

EN.....2ND APPLICANT

JUDGMENT

1. The applicants in this case SJM and ENW (hereafter referred to as the 1st and 2nd Applicants respectively) approached this Court by way of Originating summons dated 24th March 2017 filed in Court on 31.3.2017 seeking the following orders:

(i) THAT the Applicants, SJMM and ENW be authorized to adopt BABY MJ (also known as MS) and the child be called AWM henceforth.

(ii) THAT ANM be appointed LEGAL GUARDIAN of the child in the event a misfortune befalls the Applicants the Applicant rendering them unavailable or incapable of taking care of the child.

(iii) THAT the REGISTRAR GENERAL be ordered to make the appropriate entries in the adopted Children's Register in respect of AWM.

(iv) THAT AWM was born in Kenya and is presumed to be Kenyan Citizen by birth; and she is entitled to a Kenyan passport.

2. The 1st and 2nd Applicants who are husband and wife started living together in 2012 and in 2015, they had a civil wedding on 28th August 2015 at Nairobi. They have attached their Marriage Certificate Serial No. [Particulars Withheld].

3. The 1st Applicant was born on 1st September 1972 and he is self employed with an income of Ksh.200,000 per month. He is in the entertainment industry and he has a company called [Particulars Withheld] Limited.

4. The 2nd Applicant was born on 31st October 1982 and she is also self-employed with an income of Ksh.30,000 per month. She sells clothes.

5. The 1st and 2nd Applicants do not have a biological child of their own. The guardian ad litem gave a report that the Applicants stay with a niece and a nephew but they wanted a baby's love in the family.

6. The applicants in their Application seek to adopt Baby MSJ (also known as MS - herein referred to as the child) and to name her AWM.

7. The applicants were approved for adoption by Little Angels Network Adoption Society, filed a report dated 29th July 2016 which is detailed and states that it is in the best interest of the child that the adoption order is granted.

8. The Child was born on 25th May 2016 at Kakamega County General Hospital to MM who was 16 years old.

9. The Child was born out of an incest relationship at a time when her biological mother MM was in class eight. The mother of M gave consent for the Child to be given for adoption since M was a minor. The written consent is dated 28th May 2016.

10. On 22nd August 2016, the child was presented before the Senior Resident Magistrate's Court in Nairobi and committed to the Nest Children's home vide Protection and Care case No. 2XX of 2016 for a period of 3 years.

11. The Child was willingly offered for adoption by the Child's mother and grandmother in line with Section 158 (4) (b) of the Children Act 2001. The biological father could not be found in order to give Consent as his whereabouts are not known.

12. The case committee of Little Angels Network declared the child free for adoption and a certificate number 00XXX was issued pursuant to Section 156 (1) of the Children Act 2001.

13. The Child was placed under the foster care of the Applicants on 28/7/2016 and they appear to have bonded well. The reports filed herein by the guardian Ad litem, the Director of Children's Services and the Little Angels Network Adoption Society are favourable.

14. I have considered the application filed herein together with the documents in support of the Application. I have also considered the Reports filed by the Little Angels Network dated 29th July 2016, the Director of Children Services dated 21st September 2017 and the Guardian ad litem dated 23.1.2018. My findings are as follows:

(i) I find the Consent of the biological mother of the child together with that of the biological grandmother were obtained since the biological mother was a minor when the child was offered for adoption.

(ii) The Consent of the biological father could not be obtained since he could not be traced.

(iii) The reports filed herein are favourable and they show that the Applicants are financially and emotionally capable of adopting the child.

(iv) The child has bonded well with the Applicants and it could be for the best interest of the Child to be adopted by the Applicants.

(v) I order that the Applicants be and are hereby authorized to adopt the Child and to name her AWM henceforth.

(vi) That ANM be and is hereby appointed Legal guardian of the Child in the event of a misfortune rendering the Applicants incapable of taking care of the Child.

(vii) The Registrar General is hereby ordered to enter the order in the adoption Register.

(viii) That the Child be presumed a Kenyan Citizen and her date of birth be 25th May, 2016.

(ix) Finally the guardian ad litem is discharged.

Orders to issue accordingly.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 16TH DAY OF NOVEMBER, 2018

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI

IN THE PRESENCE OF:

Miss Wambui Kibichu holding for Mr. Ogotu for the Applicant