



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 94 OF 2017 (O.S)

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

IN THE MATTER OF ADOPTION OF BABY R O AKA A K

BY

P M K AND R W N (APPLICANTS)

JUDGMENT

1. The Applicants P M K and R W N are in a monogamous marriage under Kikuyu customary law since 2001. They lost a child through caesarian delivery and they do not have any child of their own. They wish to adopt the male child known as Baby R O aka A K, through the Originating Summons dated 29th June, 2017. From the pleadings the court gathers that the 1st Applicant, P M K is a mason and the 2nd Applicant R W N, is a businesswoman. They reside in Gatanga in Kiambu County and are both Christians.

2. Records indicate that the minor in this matter was abandoned in a house where his mother was staying on 1st June, 2015. The matter was reported at Bahati Police Post where it was booked via OB No. [Particulars withheld]. The child was referred to Haven of Hope Children's Home on 1st June, 2015.

3. On 4th June, 2015 the child was committed to Haven of Hope Children's Home by the Nakuru Children's Court vide P&C Case No. 237 of 2015. On 3rd February, 2016, the Bahati Police Post confirmed that the biological parents of the child were not traced, nor did anyone come forward to claim the child. On 12th December, 2016 the Applicants took him into foster care with a view of adopting.

4. Prior to the hearing of the adoption application, Buckner Kenya Adoption Services prepared and filed a report in court. They also issued a certificate No. [Particulars withheld] dated 8th July, 2016 declaring the child free for adoption. The guardian ad litem P W T filed a report which was favourable and recommended the adoption of the child by the Applicants.

5. An officer from the office of the Director of Children Services has also made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child. She filed a report dated 22nd June, 2018 recommending the adoption for reasons that the child stands to gain from the opportunities in a home setting provided by becoming the son of the Applicants as opposed to living all his life in an institution as an abandoned child.

6. The child was in court during the hearing and appeared to be quiet and reserved. The reason given was that he was unwell. He however appears to have bonded well with the Applicants. He seemed to trust the Applicants. The Applicants' family members are said to be aware of the proposed adoption and support it.

7. The orders sought herein by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child's best interests are of paramount importance in every matter concerning the child.”

The **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof amplifies this principle.

8. I note that this is a local adoption and the Applicants, in my opinion have fulfilled the requirements for local adoption under the **Children Act, 2001**. They have proved during the placement period prior to adoption that they are emotionally and financially capable of taking on the challenge of raising the child in this matter.

9. Secondly, the Applicants meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred by the adoption order sought.

10. From the foregoing, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 29th June, 2017 and orders as follows:

- i. The Applicants, P M K and R W N are hereby allowed to adopt **Baby R O** who shall henceforth be known as **A K**.
- ii. His date of birth shall be presumed to be 1st May, 2015. He is presumed to have been born in Kenya in accordance with **Article 14(4)** of the **Constitution**, and the place of birth shall be Bahati in Nakuru.
- iii. P K and his wife J N N (sister to the 2nd applicant), are hereby appointed legal guardians of the child in the event that the Applicants die or are incapacitated by ill-health.
- iv. The Registrar General is directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 16th day of November, 2018.

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L. A. ACHODE

JUDGE