



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 62 OF 2015 (O.S)

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

IN THE MATTER OF ADOPTION OF T D AKA T N K

BY

P K K AND

J N K (APPLICANTS)

JUDGMENT

1. The Applicants P K K and J N K are in a monogamous marriage under Kikuyu customary law since 2001. They had no child of their own before the placement of the minor with them but have since been blessed with triplets. They wish to adopt the female child known as Baby T D aka T N K, through the Originating Summons dated 3rd March, 2015. From the pleadings the court gathers that the 1st Applicant, P K K is an accountant at [Particulars withheld] and the 2nd Applicant J N K, is a businesswoman. They reside in Ruiru in Kiambu County and are both Roman Catholics.

2. Records indicate that the minor in this matter was abandoned within Kayole on 24th February, 2006. The matter was reported at Kayole Police Station where it was booked via OB No. [Particulars withheld]. The child was referred to Imani Rehabilitation Agency-Kayole by Jojo Clinic in Kayole. She was admitted at Imani Rehabilitation Agency-Kayole, Nairobi on 24th February, 2006 vide admission Number [Particulars withheld] for protection and care.

3. On 24th May, 2006, B T was committed to Imani Rehabilitation Agency by the Nairobi Children's Court vide P&C Case No. 164/2006. The police at Kayole Police Station confirmed that the biological parents of the child were not traced, nor did anyone come forward to claim the child. On 15th October, 2011 the Applicants took her into foster care with a view of adopting. A foster care agreement was signed on 15th October, 2011.

4. Prior to the hearing of the adoption application, Children Welfare Society prepared and filed a report in court. They also issued a certificate No. [Particulars withheld] dated 23rd May, 2014 declaring the child free for adoption. The guardian ad litem J N W filed a report which was favourable and recommended the adoption of the child by the Applicants.

5. The Director of Children Services made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child. He filed a report dated 9th April, 2018 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants as opposed to living all her life in an institution as an abandoned child. The Applicants appear to be a warm family and will also give her the added advantage of siblings.

6. The child was in court during the hearing and appeared to have bonded well with the Applicants. He was jovial and clearly seemed to trust the Applicants. She regarded them as her parents. The Applicants' family members are aware of the proposed adoption and support it.

7. The orders sought 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 other pertinent law is 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 a local adoption under the Children

Act, 2001. They have proved during the placement period prior to adoption that they are 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. At the time of delivering the judgment, the court was informed that the original legal guardian D C G had passed away. A death certificate was produced in this respect. Mr. Awiti submitting on behalf of Muniafu for the Applicants sought that D C G be replaced with K M C who has filed an affidavit on 31st October 2018 consenting to be appointed as legal guardian of the child herein.

11. 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 3rd March, 2015 and orders as follows:

- i. The Applicants, P K K and J N K are hereby allowed to adopt **Baby T D aka T N K** who shall henceforth be known as **T N K**.
- ii. Her date of birth shall be presumed to be 23rd February, 2006. She is presumed to have been born in Kenya in accordance with **Article 14(4)** of the **Constitution**, and the place of birth shall be Kayole in Nairobi.
- iii. K M C is hereby appointed legal guardian 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