



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 131 OF 2017

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

AND

IN THE ADOPTION OF BABY F AKA BABY M AKA H C (MINOR)

P A O.....APPLICANT

JUDGMENT

1. Through an amended Originating Summons dated 22nd June 2018 but filed on 29th July 2018 brought pursuant to Sections 158, 159, 160, 163, 164 and 169 of the Children's Act Cap 141, Sections 1A, 1B and 3A of the civil procedure Act, the applicant herein P A O sought orders that:

A K be appointed as guardian ad litem of baby F aka Baby M aka Baby H.C.; the applicant be authorized to adopt the said baby who is presumed to be a Kenyan citizen and whose name henceforth shall be H C A; that S R O be appointed as legal guardian of the baby and the Registrar General to enter the adoption order into the adopted children's register.

2. The application is supported by a statement in support of the application dated 22nd June 2018 together with the supporting documents annexed thereto. The applicant who is a Kenyan citizen and a nurse by profession is a widow whose husband died sometime 2005 leaving her with their only child S R O born 1993 and who is also the proposed legal guardian in this case.

3. The applicant however intimated that she was engaged to one Pastor P G C with whom she is intending to get married hence the consent letter duly signed by the said fiancée dated 9th March 2017 stating that placing the child in the applicant's hands will be a blessing. Equally, her son S R O has signed a consent confirming to be the legal guardian and that he has no objection to the adoption. The motivation to adopt is borne out of the desire to provide for a needy child as well as having another son as a brother to her son S.

4. Regarding the baby, he was born to S A on 25th October 2014 at Alice Nursing Home. Upon delivery, the mother to the baby sneaked out of the hospital and disappeared never to return. Consequently, the sister in charge Alice Ngina and the hospital record keeper Linda Juma reported the incident to the Embakasi Chief and Mukuru Kwa Njenga Police Post vide OB No. [Particulars withheld].

5. On the 14th February 2015 the baby was subsequently referred to and admitted at Thomas Barnado Home as a child in need of protection and care. Later on the 15th May 2015, he was formally committed to the said home by Nairobi Children's Court through P and C Case No. 82/2015. Despite every effort made by the police to trace the mother or any other close relative nobody showed up to claim the baby.

6. Following the expiry of six months since the abandonment report was made, the child was declared free for adoption on 15th March 2017 by the Kenya Children's Homes Adoption Society after holding a case committee sitting on the same day in compliance to Section 157 (1) of the Children Act.

The baby was on 24th May, 2017 placed under the care and control of the applicant for the mandatory custody for a continuous period of 3 months. Since placement, the child has fully integrated with the adoptive mother as well as the extended family.

7. On 22nd November 2017, Alice Kimeu was appointed guardian ad litem pursuant to a Chamber Summons dated 7th September 2017. The Director Children Services was subsequently authorized to file an evaluation and assessment report of the applicant. The said report dated 7th February 2018 was filed on 8th February 2018 thus recommending the adoption. Equally, the guardian ad litem filed her favourable report on 3rd April 2018. Similarly, the Kenya Children's Homes Adoption Society filed theirs on 10th October 2017 thus recommending the adoption.

8. Both stake holders described the applicant as a hardworking person, a Christian with no criminal record, loving, ambitious, hospitable, financially stable, a person with good parenting skills and understands the finality and consequences of this adoption exercise.

9. During the hearing, the applicant pleaded with the court to give her the opportunity to adopt and bring up the baby like her biological baby. She confirmed having understood the implications of the adoption proceedings. Both the children department, adoption society and guardian ad litem poured praise on the applicant as a responsible person fit to adopt the baby.

10. I have considered the application herein, supporting statement and materials placed before the court. Issues for determination are; whether the baby is available for adoption; whether the applicant is suitable to adopt the baby; whether the adoption is in the best interests of the baby?

11. The subject in this case was abandoned at a hospital facility by his mother upon delivery. The mother has never gone back to find out what happened with her child. As confirmed through the initial police letter dated 13th February 2015 Mukuru Kwa Njenga Police Post and final letter dated 28th January 2016 from Embakasi Police Station, every effort to trace the mother and or close relative has not borne any fruit. To that extent the requirement for consent in compliance with Section 159 (1) of the Children's Act is dispensed with.

12. The baby who is a Kenyan citizen by birth and who is above six weeks and below 18 years is qualified for adoption age wise in accordance with Section 156 (1) and 157 (1) of Children's Act. Regarding his sex, being a male and the adoptive mother a female, Section 158 (2) (b) Children's Act does not allow a sole female adult to adopt a male child unless there are exceptional circumstances to justify the making of the order. Although the Act does not specifically list the envisioned exceptional circumstances, the national adoption committee issued guidelines on 13th January 2010 thus specifying circumstances that may warrant adoption of a child of the opposite gender by an applicant. Among the exceptions in relation to a sole female applicant wishing to adopt a male child are:

(1) When the child is a relative

(2) When the child has special needs and the applicant is willing and has capacity to take care of the child

(3) Where the applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility

(4) Where the child to be adopted has a sibling who is also being adopted by the applicant

(5) Where the Proposed applicant is the only person available to adopt the child

(6) Where the applicant is the legal guardian of the child or children appointed by will or in adoption proceedings and the parents die or become permanently incapacitated.

13. In this case the applicant has a biological son over whom she is willingly exercising parental responsibility. Based on this special circumstance, the baby is available for adoption.

14. Is the applicant suitable to adopt the baby? The applicant is a Kenyan citizen who is aged 58 years which age is perfectly within 25 yrs and 65 yrs being the age bracket recommended under Section 158 (1) (b). Both stake holders found her medically, physically, spiritually and financially stable. The applicant is staying in her three bed roomed house within [Particulars withheld] estate thus providing a cool and conducive environment for growth. Her monthly income from her private clinic is about 20,000/= per month.

15. As a Christian, the baby is assured of spiritual nourishment hence shaping his moral and social lifestyle. She is loving and a hardworking lady who has embraced the baby like her biological baby. This being a local adoption, I have no doubt she is suitable to adopt the baby.

16. To what extent is the adoption serving the best interests of the baby? Article 53 (2) of the Constitution and Section 4 (2) (3) of the Children Act does provide that in every decision or order made affecting the affairs of a child, the best interests of the child must be taken into account. The applicant is a Christian with no criminal record. She has various properties including a three bed roomed house where she is staying. She is financially stable thus guaranteeing the child of basic necessities like education, medical care, food, shelter, clothing and above all inheritance. The baby has a home and a family he can identify with hence reinforcing his self esteem in terms of identity.

17. It is my honest belief that the child stands to benefit immensely upon adoption. He has fully bonded with the applicant and the rest of the family members. It will not serve anybody's interest to detach the baby from the family he has identified with as his home. Accordingly, I am satisfied that this application is merited and the same is allowed as prayed with orders that:

(a) That the applicant herein be and is hereby authorized to adopt baby F aka baby M aka H C henceforth to be known as H C A.

(b) That the baby's date of birth shall be 25th October 2014 and place of birth Embakasi, Nairobi Kenya.

(c) That the baby is presumed to be a Kenyan citizen.

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

(e) That the Director Immigration is directed to issue the baby with a Kenyan passport.

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

(g) That S R O a son to the applicant be and is hereby appointed as legal guardian in case of the death of the applicant or any eventuality.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 1ST DAY OF NOVEMBER 2018.

J.N. ONYIEGO

JUDGE