



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 145 OF 2017 (O.S)

IN THE MATTER OF THE CHILDREN ACT 8 OF 2001

AND

IN THE MATTER OF BABY K H

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY A M E AND A K K

JUDGMENT

1. Vide an application brought by way of Originating Summons dated 10th October, 2017 and filed on 11th October 2017 pursuant to sections 158, 159 and 160 of the Children Act No. 8 of 2001, section 24 of the Interpretation and General Provisions Act Cap 2 Laws of Kenya and section 3A of the Civil Procedure Act Cap 21 Laws of Kenya, the applicants herein sought the following orders:

1. That J N N of Identity Card No. [particulars withheld] be appointed *Guardian ad litem* of Baby K H in this cause.
2. That the applicants be authorized to adopt Baby K H.
3. That upon adoption, the child be known as A V M.
4. That the child be presumed to be a Kenyan citizen and be accorded all rights of immigration that accrue to Kenyan citizens.
5. That the Registrar General be directed to enter this adoption into the Register of Adoptions.

2. The application is premised on the grounds set out on the face of it and a joint statement of the applicants and annexures thereof.

3. The applicants are both Kenyan citizens, have been legally married for six (6) years having contracted their marriage on 12th December, 2009. They reside in South Park Estate in Athi River and have one biological child who is aged seven (7) years. The applicants' motivation to adopt the child emanated from their desire to expand their family as well as to provide for a needy child.

4. The male applicant works at [particulars withheld], East and West Africa as a Business Unit Experimental Manager whilst the female applicant runs her own catering and farming business.

5. From the record, the child was found abandoned at [particulars withheld] in Mlolongo on 1st February, 2016. At the time of abandonment, the child was presumed to be a new born. The abandonment report was booked at Mlolongo Police Station vide OB No. 70/1/02/2016.

6. On 2nd February, 2016 the child was admitted to Mahali Pa Maisha Rescue Centre. Vide an order of 4th May, 2016 issued by the Children's court at Mavoko; the child was committed to the care and protection of Mahali Pa Maisha Rescue Centre in Protection and Care case number 7 of 2016. During the child's stay at the institution, no one turned up to claim her.

7. A letter dated 4th August, 2018 from the Mlolongo Police Station indicates that as at that date, no one had claimed the child or raised any issue regarding the child.

8. Prior to the hearing of the application, the Change Trust Adoption Office filed a report dated 12th August, 2016 and filed on 16th November, 2017. The report indicates that a follow up with the Good Samaritan who rescued the child was done on 11th August, 2016, who

stated that he had not known of any claimant since the child was abandoned on 1st February, 2016. The child was declared free for adoption on 12th August 2016 vide a Certificate of serial number 00147 issued by CHANGE Trust adoption society.

9. On 18th August, 2016 the applicants took the child into foster care with a view of adopting having received approval from Mahali Pa Maisha Infant Rescue Centre. A Care and Placement agreement was signed on 18th August, 2016.

10. Pursuant to an order of the court dated 16th January, 2018 the guardian ad litem J N filed an assessment report on 24th July, 2018. She recommended the adoption of the child by the applicants stating that she was without a doubt that the child would have a wonderful childhood and be instilled with good Christian values.

11. An officer from the office of the Director of Children Services made home visits and established that the Applicants are financially and emotionally capable of providing the child with parental love, care and other basic needs. She filed a report on 6th March, 2018 recommending the adoption for reasons that the applicants are capable of caring for the child in a permanent way and the child stands to gain by becoming a daughter of the applicants, and that the applicants have met all the legal requirements for a local adoption as per the Children Act.

12. From the reports filed by both the *guardian ad litem* and the office of the Director of Children Services, it is evident that the applicants have no criminal record and understand the consequences of adoption.

13. The record demonstrates that the applicants have fulfilled all the legal requirements relating to a local adoption of a child. The consent of the biological parents was dispensed with since the child was abandoned at infancy and the parents could not be traced to give the consent pursuant to section 159(1) of the Children Act.

14. This being a local adoption, and the applicants having fulfilled all the legal requirements, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicants. Article 53(2) of the Constitution provides that before any decision affecting the affairs of a child is made, the best interests of a child must be taken into consideration. Similar position is replicated in **section 4(2)&(3) of the Children Act(see also Article 3 of the United Nations Convention on the Rights of the Child)**

15. In the instant case, the baby does not have any known parent or relative. The only home she knows is that of the applicants. She is at least assured of basic provision like food, shelter, clothing, education and medical care. In the case of **In re C A & K A(both minors) (2014)eKLR** Sitati J observed that, the best interest of a child which includes a child's basic needs that is; food, shelter, clothing, health and education, parental care and a safe environment to grow in must be taken into consideration when making adoption orders. In the instant case, the baby is guaranteed the basic needs and the right to inherit

16. Accordingly, It is my holding that the application herein is merited and the same is allowed with orders as follows:

- a) **That A E M and A K K be and are hereby authorized to adopt Baby K H who shall henceforth be known as A V M.**
- b) **That the child's date of birth shall be 1st February 2016 and her place of birth Mlolongo Machakos County Kenya.**
- c) **That the child is presumed to be a Kenyan citizen entitled to all rights accruing to a Kenyan citizen**
- d) **That N O O and D N M be and are hereby appointed as the legal guardians of the child in the event that the Applicants die, or are incapacitated by ill-health.**
- e) **That the Registrar General be and is hereby directed to enter this adoption into the Register of Adoptions.**
- f) **That the guardian ad litem be and is hereby discharged.**

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY NOVEMBER 2018.

J.N.ONYIEGO

JUDGE