



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 3 OF 2018 (O.S)

IN THE MATTER OF THE CHILDREN ACT 8 OF 2001

AND

IN THE MATTER OF BABY Z A

AND

IN THE MATTER OF AN APPLICATION FOR ADOPTION BY M N C AND P K J

JUDGMENT

1. Vide an application brought by way of Originating Summons dated 20th November, 2017 and filed on 16th January 2018 pursuant to **section 160(1)** of the **Children Act 8 of 2001**, the applicants herein sought the following orders:

- 1. That L J K of P. O. Box 52764-00200 Nairobi be appointed *Guardian ad litem* to Baby Z A in this cause.**
- 2. That the consent of the biological father of the infant Baby ZA be dispensed with.**
- 3. That M N C and P K J be authorized to adopt Baby Z A who is presumed to be a Kenyan Citizen.**
- 4. That upon adoption, the child be known as A Z N.**
- 5. That B N P of Kenyan National Identity Card Number [particulars withheld] be appointed as the legal guardian of Baby Z A.**
- 6. 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 Kenyan citizens, who got married under Sabot Customary Law in the year 2006 and thereafter obtained a Customary Marriage Certificate through the office of the Deputy County Commissioner Thika West on 7th December, 2016. (See Marriage Certificate marked DOC 3).

4. From the pleadings, the male applicant is a Doctor by profession currently working at [particulars withheld] Healthcare Ltd whereas the female applicant is a Human Resource Personnel currently working at [Particulars withheld] (E.A) Ltd. They however have no child of their own since the female applicant is unable to conceive due to medical complications hence the current application to adopt the Baby who is the subject herein.

5. The applicants state that they have obtained the consent of the biological mother of the infant for the adoption process. The child's biological mother deponed a statutory declaration dated 7th June, 2016 to this effect. They have however not obtained the consent of the biological father of the child since he cannot be traced.

6. The documents filed in this court indicate that the child is of African origin and born on 19th April, 2016. The child was offered out for adoption by her biological because she conceived the child with her cousin an act which is frowned upon and considered a taboo in Luhya customs. The child was handed over to Rehema Pefa Children Home as a child in need of care and protection on 20th April, 2016. She was

later committed to the said Home vide a committal order granted at Kakamega Children's Court on 4th August, 2016 in p and c case no 239 of 2016.

7. Through its case committee sitting held on the 17th May 2017, the Kenya Children Home Adoption Society declared the baby free for adoption and effectively issued a certificate s/no. 1352. Subsequently, the baby was placed under the foster care of the applicants on 14th July 2017.

8. Prior to the hearing, the Kenya Children's Homes Adoption Society, the Director Children services and the Guardian ad litem filed their respective reports recommending the adoption of the child by the applicants. From the reports, it is clear that the applicants have no criminal record and understand the consequences of adoption. They have also been described as mentally, physically, emotionally, morally, spiritually and financially fit and stable.

9. An officer from the Office of the Director of Children's Services conducted a home visit at the applicants' Thika residence. The officer established that the Applicants are emotionally and financially capable of caring and providing for the child. That the child has bonded with the applicants and appears to be of good health and of a jovial nature.

10. This is a local adoption and is important to determine whether the applicants have fulfilled the legal requirements for the adoption of the child.

11. The prerequisites for adoption are contained in **sections 156, 157, 158 and 159** of the **Children Act**. Under **section 156** of the **Act**, the child should be at least six weeks old and declared free for adoption, both of which have been satisfied in the present case. The child herein is a Kenyan citizen resident in Kenya as provided under **section 157** of the **Act**. The applicants herein are both 41 years of age and therefore above 25yrs and below 65yrs in compliance with section 158(1) of the Children Act. The necessary consents as stipulated under **section 158(4)** of the Children's Act have been obtained both from the mother and the grandmother to the baby.

12. The orders sought by the applicants herein relate to a child born out of an incestuous relationship. According to the Luhya community, such a child is regarded as a bad omen hence should be killed. Given the unique customs of the Luhya community, the best interests of the baby is paramount hence preservation of life first.

13. Under Article 53(2) of the Constitution and section 4(3) of the Children Act, before any decision affecting the affairs of a child are made by any court of law or institution, the best interests of a child must be taken into consideration. In the instant case, it is a matter of life and death for the baby. Obviously, life is sacrosanct and it takes primacy.

14. The baby herein is in need of basic requirements such food, shelter, education, clothing, medical care, parental care and guidance and above all, generational identity. The applicants are people of means and staying in their own three bed roomed house thus providing a conducive environment for growth. Their monthly income is well over Kshs 90,000 which amount is sufficient proof of their financial stability. By all standards, the applicants are fit to adopt the baby and that it is in the baby's best interests that he be adopted by the applicants.

15. Accordingly, in the spirit of ensuring that the best interest of the child is realized, the application dated 20th November, 2017 is allowed in the following terms:

- a) That M N C and P K J be and are hereby authorized to adopt Baby Z A who shall henceforth be known as A Z N.**
- b) That the date of birth of the baby shall be 19th April 2016**
- c) That B N P (Uncle to the male Applicant) is hereby appointed as the legal guardian of the child in the event that the Applicants die, or are incapacitated by ill-health.**
- d) That the Registrar General be and is hereby directed to enter this adoption into the Register of Adoptions.**
- e) That the Director Immigration shall issue the baby with a Kenyan passport.**
- f) That the guardian ad litem be and is hereby discharged.**

DATED SIGNED AND DELIVERED AT NAIROBI THIS 1ST NOVEMBER 2018

J.N.ONYIEGO

JUDGE