



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
ADOPTION CAUSE NO.59 OF 2015
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
AND
IN THE ADOPTION MATTER OF AM(ACHILD)
BY
CMM AND LWK (JOINT APPLICANTS)
JUDGMENT

1. Through an originating summons dated 20th February 2015 and filed on 3rd March 2015, CMM and LWK herein referred to as the 1st and 2nd applicants respectively, sought various orders as hereunder pursuant to Section 154 of the Children's Act and all enabling provisions of the Children's Act.

- i. That the applicants be authorized to adopt Baby EM**
- ii. That the child be declared a Kenyan citizen**
- iii. That upon making of the adoption order, the child be known as SMM and;**
- iv. That the Registrar-General do make appropriate entry in the adopted children's register.**

2. The application is premised on grounds on the face of it, a statement in support of the application for an adoption order dated 20th February 2015 and joint affidavit in support deponed by the applicants on the same date. The applicants herein are husband and wife aged 49yrs and 53yrs respectively. They celebrated their marriage in the year 2003 under the African Christian Marriage and Divorce Act Cap 151. Due to medical complications, the couple has not been able to get any biological child of their own hence the motivation to adopt the minor herein. The 1st applicant is a businessman operating his own business while the 2nd applicant is a secretary at the [particulars withheld]Church of Kenya (ACK) St. Peter's Uthuru.

3. Baby E.M. was born on 1st September 2012 at Pumwani Maternity Hospital by EM (17 years old as at 2012). The grandmother to the minor DLM ID NO [particulars withheld] gave consent for the child to be offered to Pumwani Maternity Hospital since she could not be able to provide for his needs due to financial constraints. After undergoing necessary counseling sessions, the grandmother gave her consent fully aware of the consequences and effect of an adoption order.

4. In compliance with Section 158(4) of the Children's Act, the mother of the child in the company of her biological mother DLM went to the child Welfare Society of Kenya on 4th December 2012 and gave her formal consent for the adoption of the child. Baby EM was committed to CWSK Mama Ngina Kenyatta Children's Home on 25th February 2013 by the Children's Court Nairobi, vide care and protection case number 49/2013 for care and protection.

5. Pursuant to the case committee held by Child Welfare Society of Kenya, the child was declared free for adoption on 3rd March 2014 and a certificate serial number 0643 issued to that effect. The child was placed with the applicants on 25th March 2013 for mandatory bonding as confirmed by the care agreement dated and signed by the applicants on the same day.

6. Through a chamber summons dated 20th February 2015 and filed on 3rd March 2015, the court appointed SWM as guardian ad litem on

25th September 2015 thus directing the director children services to file an assessment and evaluation report of the applicants and their suitability for adoption within 45 days.

7. Prior to the hearing, the Director Children services and guardian ad litem filed their respective assessment and evaluation reports on 28th February 2018 recommending the adoption.

8. I have considered the application herein, affidavits in support and testimony by both applicants plus materials placed before the court. Issues for determination are:

a. Is the baby herein available for adoption;

b. Have the applicants met the requisite conditions for adoption;

c. Is the adoption in the best interests of the baby.

9. The baby who is the subject of these proceedings was offered for adoption by the grandmother as the birth mother who is her daughter was under the age of maturity having given birth at the age of 17 years. Both the baby's grandmother and birth mother were counseled and informed of the consequences of an adoption order and forfeiting their parental rights on the child in accordance with Section 158(4) of the Children's Act.

10. The mother to the child in the company of her biological mother D L M went to the child Welfare Society of Kenya on 4th December 2012 and gave her formal consent to the adoption of the child. The baby was declared free for adoption on 29th July 2016 by which time the baby was over 6 weeks a mandatory minimum age limit required of a child before adoption in compliance with Section 158 (1) of the Children's Act.

11. According to Section 157 (1) of the Children's Act, any child who is a resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya provided that no application for an adoption order shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants as the case may be evaluated and assessed by a registered adoption society in Kenya.

12. The baby has been under the continuous foster care and control of the applicants for about five years now since placement. The baby is a Kenyan citizen by birth whose mother is also Kenyan. Having complied with the necessary conditions before adoption, it is my finding that the baby is available for adoption.

13. Are the applicants suitable to adopt the baby? The adoptive parents are Kenyan citizens thus qualifying the adoption herein as a local adoption. They are aged between 25 years and 65 years being the mandatory age requirement for both or either applicant before adopting any baby in compliance with Section 158 (1) of the Children's Act. They are fully aware of the consequences of this adoption and appreciate the same.

14. Both applicants are mentally sound and financially stable to cater to the child. They have not been convicted of any offences set out in schedule 3 of the Children's Act as evidenced by their Police clearance certificates. The applicants are therefore suitable persons for purposes of this adoption.

15. Is the adoption in the best interests of the baby? The best interests of a child principle is aptly captured in the Kenyan Constitution Article 53 (2) which provides:

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

16. Besides the Constitution, Section 4 (2) and (3) of the Children's Act replicates the same principle.

Sub Section 2 provides:

“In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

17. The child was given up for adoption by the birth mother in the company of the grandmother as she was under the age of majority. The grandmother indicated financial challenges in catering for the baby as the reason for giving the baby out for adoption. The grandmother and birth mother had been counseled and explained to the consequences of an adoption order which they positively appreciated.

18. According to the reports by the department of children services and the guardian ad litem the baby is happy, healthy and has bonded well with the adoptive parents. The baby has been enrolled in a good school and is enjoying caring and parental love from the adoptive parents. He is assured of good shelter, food, education, clothing and medical care. From the foregoing, I find that it is in the best interests of the baby that he be adopted by the applicants and therefore make orders as follows:

(a) That the applicants herein CMM and LWK be and are hereby authorized to adopt baby EM who shall henceforth be known as SMM.

(b) That the baby's date of birth shall be 1st September 2012 and his place of birth shall be Nairobi County, Kenya

(c) That the Registrar General be and is hereby directed to enter the adoption order in the children's adoption register.

(d) That the Director Immigration be and is hereby directed to issue the child with a Kenyan passport.

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

(f) That E W K a sister to the 2nd applicant is hereby appointed as a legal guardian in the event the applicants dies or are incapacitated by any eventuality before the child attains the age of maturity.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 6TH DAY OF DECEMBER 2018.

J.N. ONYIEGO

JUDGE