



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

ADOPTION CAUSE NO. 238 OF 2015

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

AND

IN THE MATTER OF AN APPLICATION BY ARW AND AWK FOR AN ORDER OF ADOPTION

IN THE MATTER OF ADOPTION OF BABY B S

JUDGMENT

1. By originating summons dated 7th August 2015 but filed on 24th September 2015, the applicants herein ARW (1st applicant) and AWK (2nd applicant) sought various orders as particularized hereunder pursuant to Sections 154, 159, and 160 of the Children's Act and all enabling provisions of the Children's Act.

- i. That the application be and is hereby certified as urgent and the same be heard forthwith.**
- ii. That the requirements of section 158(4) of the Children Act be waived as provided for by section 159(1)(a) of the Act.**
- iii. That PNN of P.O. Box [...] Kinamba be appointed Guardian Ad Litem.**
- iv. That the Director of Children services do conduct investigations on the suitability of the adoptive parents and file their reports in court.**
- v. That the applicants be authorized to adopt BS and the said child to be known as ARJ.**

2. The application is premised on grounds on the face of it, statement in support of the application for an adoption order dated 7th January 2017 and joint affidavit in support deposed by the applicants on the same date. The applicants herein are husband and wife and are Kenyan citizens who solemnized their marriage at the office of the Registrar of Marriages on 11/9/2009. Due to medical complications, the couple has not been able to get any biological children of their own hence the motivation to adopt the minor herein. The applicants are 45 and 40 years old respectively. Professionally, the 1st applicant is employed as a teacher teaching at [Particulars Withheld] primary school while the 2nd applicant is working as a nursing officer at [Particulars Withheld] County.

3. According to the birth certificate s/no.[...] issued at Thika General Hospital, the baby herein was born on 7th April 2009. On 8th April 2009, the baby was found abandoned by the birth mother at [[Particulars Withheld] Estate in Juja Location. He was allegedly rescued by a member of the public who reported the matter to Juja Police station vide OB No. [Particulars Withheld]. The police via their letter dated 8/04/2009 referred the baby to Thika District hospital for medical assessment. According to a letter from Thika District Hospital dated 16th April, 2009 the baby was admitted at the New born Unit on referral from the OCS Juja Police Station.

4. The baby was subsequently placed with New Life Children's home for care and protection on 13th May 2009 through care and Protection case no 61 of 2009 Thika Children's Court. Despite every effort to trace the mother, the police via their letter dated 23/10/2009 stated that no one had come forward to claim the baby.

5. During the case committee held by Little Angels Adoption Society network on 24th September 2009, the baby was declared free for adoption and issued with a certificate s/no [...] declaring the child free for adoption. The child was placed with the applicants for the mandatory bonding as confirmed by the care agreement dated and signed by the applicants on the same day.

6. Pursuant to a chamber summons dated 7th September 2005 and filed on 24th September 2015, the Court appointed PNN as guardian ad

litem on 12th October 2016. Consequently, the director children services was directed 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, guardian ad litem and Little Angels Network Adoption Society filed their assessment and evaluation reports on 5th July 2018, 12th July 2018 and 14th October 2015 respectively 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 abandoned at [Particulars Withheld] Estate in Juja Location by his birth mother. As evidenced by police letters dated 8/04/2009 and 23/10/2009, their effort to trace the mother and or relatives has been futile. To that extent the baby has not been claimed by anybody and the requisite consent as required by Section 159 (1) of the Children's Act is dispensed with. 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.

10. 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.

11. The baby has been under the continuous foster care and control of the applicants for over three months in compliance with Section 157(1) of the Children Act. The baby who is below 8 years is presumed to be a Kenyan citizen by dint of Article 14(4) of the Kenyan constitution which presumes any child aged below 8yrs who is found in Kenya and whose parents or nationality is unknown. Having complied with the necessary conditions before adoption, it is my finding that the baby is available for adoption.

12. 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 its consequences. Having been duly assessed and evaluated by both the children department, guardian ad litem and Little Angels Adoption Society, they were found to be medically, emotionally, mentally, morally and economically fit and stable. To that extent, the two are suitable persons for purposes of this adoption.

13. 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”.

Besides the constitution, Section 4 (2) and (3) of the Children's Act reinforces 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”.(See – **In Re AW alias AN (a child) (2008) I KLR (G and F)**).

14. Having been abandoned and now unclaimed, the baby has no known relative or family. He is in need of care and protection and a family. The applicants are both employed with a combined monthly income of Kshs.46,000. They are financially able to cater to the baby's basic needs including shelter, food, clothing, education and medical care

15. The applicants seem to appreciate their responsibilities and obligations towards raising the baby and his right to inheritance. The baby is guaranteed a safe home, economic, moral and psychological growth and support. From the reports filed by the department of children services adoption society and the guardian ad litem, the baby has fully bonded with the adoptive parents. I do not see any reason sufficient enough to disallow or reject the application.

16. 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:

i. That the applicants herein **ARW** and **AW K** be and are hereby authorized to adopt **baby B S** who shall henceforth to be known as **ARJ**.

ii. That the baby's date of birth shall be 7th April 2009 and his place of birth Juja Location, Kiambu County Kenya

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

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

v. That the guardian ad litem be and is hereby discharged.

vi. That **CMM** a friend to the applicants be and is hereby appointed as 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