



REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
IN THE MATTER OF THE CHILDREN'S ACT 2001
ADOPTION 7 OF 2017
AND
IN THE MATTER OF ADOPTION OF B. A. M.....MINOR
BY
D K K & J W K.....APPLICANTS

JUDGMENT

1. By an Originating Summons dated 04/04/2017, the Applicants approached this Court for orders that:
 1. That W K be appointed as Guardian ad Litem of the Minor Baby A M
 2. That the Director of Children's Services do evaluate the applicants and file a report.
 3. That the Applicants be authorized to legally adopt Baby A M who will thereafter be known as C N K.
 4. That the minor be presumed to be a Kenyan Citizen.
 5. That D N M be appointed as legal guardian to the minor.
 6. That the Registrar General do make the appropriate entry of Baby A M K the minor herein in the Adopted Children's Register.
 7. That the minor be issued with a Kenyan Passport and or travel documents by the Director of Immigration.
2. The Applicants filed all the requisite documents in support of the Originating Summons including:
 - a. Statement in Support of Application for an Adoption Order;
 - b. An Affidavit signed by both Applicants in Support of the Application for Adoption;
 - c. An Affidavit by the Proposed Guardian ad Litem; d. Affidavit of fitness of Guardian ad Litem;
 - e. Consent of the Guardian ad Litem in respect to the Minor;

- f. Affidavit of Consent to the Adoption of a Child by the Minor's Biological Mother;
- g. Birth Certificate of the Minor;
- h. Death Certificate evidencing the death of the Biological Father;
- i. Bundle of Documents from KKPI Adoption Society;
- j. Financial Documents evidencing financial stability of the Applicants;
- k. Certificate of Good Conduct from the Australian Police (the Applicants reside in Australia);
- l. Documents from the respective employers of the Applicants evidencing that they are both in remunerated employment in Australia;
- m. Marriage Certificate evidencing that the Applicants got married on 19/01/2008;
- n. Certificate of free for adoption by KKPI Adoption Society.

3. Contemporaneously with the Originating Summons, the Applicants filed a Chamber Summons Application praying:

- a. That W K be appointed as Guardian ad Litem of the Minor Baby A M.
- b. That the Director of Children's Services do evaluate the Applicants and file a report in Court..

4. When the two contemporaneous Applications were filed in Court, I was on my annual leave. On 06/06/2017, the Applicant filed a Certificate of Urgency praying that the Chamber Summons dated 04/04/2017 be heard as an urgent matter because the Minor in an accompanying file (this minor's sister) was turning 18 years old on 12/06/2017 and hence likely to lose out on the adoption if the Court did not move with exceptional speed.

5. As fate would have it, I was indisposed that week and did not resume work until Thursday, 08/06/2017. I entertained the Chamber Summons Application on that day and gave certain directions in view of the urgency of the case. There were two intersecting emergencies. Baby A's sister was due to turn 18 a mere four days later and the Applicants, who live and work in Australia, would most certainly not make it to be physically present in Court for any expedited hearing.

6. Consequently, Mr. Elkington, Counsel for the Applicants applied, first for an expedited hearing date and secondly, to dispense with the appearance of the Applicants in Court during the hearing of the adoption Application.

7. In making a determination on Mr. Elkington's application, I was guided by the ringing admonition in Article 53(2) of the Constitution. The sub-article provides: "A child's best interests are of paramount importance in every matter concerning the child." This same guidance is statutorily provided for in Section 4(2) of the Children Act (No. 8 of 2001) where all Courts of Law are required to take the best interests of the child as the primary consideration in all actions concerning children.

8. With this in mind, I directed that:

- a. The Director of Children Services who was represented in Court by the Assistant County Coordinator of Children Services, Ms. Jane Kabiro, completes an evaluation of the Applicants' suitability as adoptive parents and file a report in Court by the morning on 12/06/2017. I expressly permitted the Children Department to conduct an interview of the Applicants by Video link.
- b. W K be appointed Guardian Ad Litem and that she evaluates the Applicants and file a report

with the Court by the morning of 12/06/2017.

c. That the Originating Summons be scheduled for hearing on 12/06/2017 at 11:30am.

d. That in view of the context and circumstances, the physical presence of the Applicants was dispensed with but that they would appear and interact with the Court by Video link arranged by the Advocate for the Applicants.

9. In making the last direction, I was, in turn, guided by not only the exigencies of this case but by the duty of the Court now stated in Section 1B of the Civil Procedure Code namely to use suitable technology to ensure timely, proportionate and efficient disposal of the business of the Court. Additionally, I got inspiration from an earlier decision by my Senior Brother, Ochieng' J. in ***Livingstone Maina Ngare v Republic [2011] eKLR*** where, in a criminal law context, he found nothing illegal or improper with the Court receiving Video-link evidence from a witness who was based in the United States and who could not travel to give face-to-face evidence.

10. Hence, when we resumed on 12/06/2017, we were joined by the Applicants via Video link (Skype). I conducted preliminary *voir dire* to confirm their identities and I was satisfied that they were, indeed, the Applicants.

11. The primary consideration in an adoption Application is whether the Applicants have fulfilled all the pre-requisites to be granted the Adoption Orders. These are mainly found in Sections 158 and 163 of the Children Act. I have now carefully read all the documents filed in the case. I have confirmed that all the reports and consents needed are on file. The minor is free for adoption and KKPI, an authorized adoption society has issued a Certificate to that effect. The consent of the Biological mother is on record as is the consents of the proposed Guardian and the Applicants.

12. In addition, I have read the two reports filed by the County Coordinator of Children Services as well as the reports by the Guardian Ad Litem and the Adoption Society. All reports are unanimous that it will be in the best interests of the minor for the Court to grant the Adoption Orders. I see no reason to dissent from those views. I am satisfied that the Applicants meet all the attributes required of Applicants in Section 158 of the Children Act. I am also satisfied that the Applicants understand the consequences and import of Adoption Orders. Finally, I am satisfied that it is in the best interests of the minor for the Adoption Orders to be given.

13. In reaching these conclusions, I have considered that this is a kinship adoption: the 2nd Applicant is the maternal aunt to the minor. I have also considered that the Biological Mother, who was present in Court, consented to the adoption knowingly and voluntarily. She chose the adoption path for her children because she is concerned that she cannot provide for them adequately following the death of their father in 2015. The death certificate of the biological father is in the bundle of documents filed. I was also satisfied that the minor wishes to go through with the adoption and expressly stated so in Court.

14. Consequently, the orders sought are merited. I, therefore, make the following orders:

a. That the Applicants be and they are hereby authorized to adopt Baby A M;

b. That Baby A M will henceforth be known as A M K;

c. That Baby A M is presumed a Kenyan citizen;

d. That D N M is hereby appointed as the Legal Guardian to Baby A M.

e. That the Registrar General is directed to make the appropriate entry of Baby A M in the Adopted Children's Register.

f. That Baby A M be issued with a Kenyan passport by the Director of Immigration upon

appropriate application.

15. Orders accordingly.

Dated and delivered at Kiambu this 12th day of June, 2016.

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JOEL NGUGI

JUDGE