



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 222 OF 2014
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF BABY A G H (MINOR)

JOSEPH ROBERT HART APPLICANT

JUDGMENT

The Applicant, Joseph Robert Hart (“the Applicant”) seeks by his application to be allowed by this Court to adopt Baby A G H (hereafter “the child”). The Applicant is an American citizen who is aged about 51 years. He is an educator (teacher) currently employed with the Saudi Arabian Oil Company (Saudi Aramco). The child who is the subject of the present adoption proceedings was born on 16th December 2012 to Magdalene Karimi. A copy of her birth certificate has been annexed to the application.

Section 158 (2) (a) of the **Children Act** provides as follows;

“(2) An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order-

a. a sole male applicant in respect of a female child;”

In this case, the Applicant states that he married the child’s biological mother under a civil marriage celebrated in the Kingdom of Bahrain on 21st August 2014. A copy of the Certificate of Marriage No. 2014057520 is annexed to the application for adoption as proof of the marriage. The Applicant states that after the marriage, they set up a home in Westlands, Nairobi where they are now domiciled. The couple has been blessed with a child, a son born on 7th February 2015. The Applicant has assumed parental responsibility and accepted the child subject of these proceedings. These adoption proceedings are meant to formalize the relationship between the child and the Applicant. Due to the fact that the adoption order issued by the court will have citizenship implications for the child, the child will be accorded American citizenship by virtue of the fathers citizenship.

Prior to the hearing of the adoption, KKPI, an adoption society, prepared a report which is filed in court. They also issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said freeing certificate is no. 496 and the same is dated 12th June 2015.

In an application filed on 10th September 2015, the Applicant sought among others, orders from this Court that Mercy Wangari Ngiri be appointed as the child’s guardian ad litem, and that the Director of Children Services be ordered to investigate the suitability of the Applicant to adopt the child and submit a

report. The Applicant also sought to have the Court appoint Veronica Njoki Ngiri and Patrick Njiru Kabiruchi the child's maternal aunt and her husband, as the child's legal guardians. He further sought for an order that upon adoption the child be known as A G H. On 25th September 2015, this Court issued an order appointing Mercy Wangari Ngiri as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to file their respective reports in Court.

Pursuant to **Section 156(1)** of the **Children Act**, before this matter came up for hearing, KKPI, the relevant adoption society, prepared and filed in Court a favourable report in respect of the proposed adoption of the child by the Applicant. Another report in respect of the proposed adoption of the child by the Applicant was prepared by the Director of Children Services, and this report was similarly in favour of the proposed adoption. The guardian ad litem, Mercy Wangari Ngiri, also filed the statutory report made under **Section 160(2)** of the **Children Act** in which she noted that the proposed adoption of the child by the Applicant would be in the best interests of the child. All the statutory reports that have been filed in respect of the proposed adoption of the child by the Applicant have recommended that this Court allows the Applicant to adopt the child.

Section 158 (4) (a) of the **Children Act** provides that an application for adoption shall be accompanied by;

“(a) the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child.”

The consent of the biological mother of the child has been obtained through an affidavit filed on 10th September 2015. The child's biological mother has further sworn an affidavit dated stating that the child's biological father has denied paternity and has never assumed parental responsibility over the child. This court therefore dispenses with the consent of the child's biological father to the proposed adoption.

This Court has evaluated the facts of this adoption. This is a local adoption. It is evident that the Applicant has fulfilled all the legal requirements relative to the adoption of the child. This is an adoption within a family. The adoption sought is meant to formalize the relationship between the child and the Applicant. The consent of the biological mother of the child has been obtained. Consent of the child's biological child has been dispensed with for denial of paternity. This Court has satisfied itself that the Applicant is qualified and able to take care of the child. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children Services established that the Applicant has the financial and emotional capability to provide for the upkeep and education of the child. This Court observed the Applicant with the child in Court and it was evident that in the period that the Applicant has had the custody of the child, the child has bonded well with him. The child considers the Applicant to be her father.

On the basis of a careful examination of the documents presented before me as well as the observations made therein, this Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicant. Hence, this Court allows the Applicant's application. The Applicant, Joseph Robert Hart, is hereby allowed to adopt Baby A G H. Veronica Njoki Ngiri and Patrick Njiru Kabiruchi the child's maternal aunt and her husband shall be the legal guardians of the child should such eventuality arise. This Court directs the Registrar General to duly enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2016

M.W. MUIGAI

JUDGE

In the presence of:

