



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 37 OF 2014 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY J
BY
G G I AND W N M (APPLICANTS)

JUDGMENT

1. The Applicants G G I and W N M are in a monogamous marriage which was solemnized at the [Particulars withheld] Catholic Church in Kiambu on 27th November 2004. They have one adopted child, P I aged 10 years. They wish to adopt the child known as Baby J, a minor of female sex, through the Originating Summons dated 30th January, 2014. From the pleadings the court gathers that G G I is a self-employed Carpenter while W N M is a peasant farmer. They reside in [Particulars withheld], Kiambu and are both Christians.
2. Records indicate that on 14th March, 2009 the child who is the subject of this adoption proceedings was found by a Good Samaritan within Githurai 44 area having been abandoned at infancy. The report was booked via OB No. [Particulars withheld] at Kasarani Police Station.
3. The child was referred to Missionaries of Charity on the same day for care and protection. On 24th June, 2009 the child was officially committed to the same home by the Senior Resident Magistrate at Nairobi court, vide P&C Case No. 313/2009. A second letter dated 16th March, 2010 from Kasarani Police Station indicates that the biological parents of the child were not traced, nor did anyone come forward to claim the child.
4. The child was declared free for adoption on 14th September, 2010 by the Kenya Children's Home Adoption Society, vide certificate No. [Particulars withheld]. She was released into the custody of the Applicants for mandatory foster care pending adoption on 15th December, 2010. The Applicants also signed a Foster Care Agreement dated the same day. Since then she has been in the continuous custody and care of the Applicants. Prior to the hearing of the adoption application, Kenya Children's Home Adoption Society, an adoption society, prepared and filed a report in court.
5. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the child.
6. The Director of Children's Services also filed a report dated 22nd December, 2015 recommending the

adoption for reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants and growing up in a family setting rather than growing up in an institution. The guardian ad litem, Mr. J M M also filed a report that was favourable and recommended the adoption of the child by the Applicants.

7. The child was in court during the hearing and appeared to have bonded well with the Applicants. She was jovial and related well with the Applicants. Both Applicants' families support the adoption.

8. Of note is that the orders sought by the Applicants relate to a child. In law, in any matter concerning a child, the best interests of a child are paramount. **Article 53(2)** of the **Constitution** provides the guiding principle on this question as follows:

“A child’s best interests are of paramount importance in every matter concerning the child.”

The other pertinent law is the **Children Act No. 8 of 2001** and in particular **Section 4(3)** thereof.

9. I note that this is a local adoption and the Applicants, in my opinion have fulfilled the requirements for local adoption under the Children Act, 2001. They have proved during the placement period prior to adoption that they are capable of taking on the challenge of raising the child in this matter. Secondly, they meet the social parameters that are considered relevant to their taking on parental responsibility and custody of the child in this matter, on a permanent basis as would be conferred to by the adoption order sought.

10. From the foregoing, this court has formed the opinion that it is in the best interest of the child to be adopted by the Applicants. Reasons wherefore, I allow the prayers sought in the Originating Summons dated 30th January, 2014 and order as follows:

- i. The Applicants, G G I and W N M are hereby allowed to adopt **Baby J** who shall henceforth be known as **A W G**.
- ii. Her date of birth shall be presumed to be 14th March, 2009. She is presumed to have been born in Kenya in accordance with **Article 14 (3)** of the **Constitution**, and the place of birth shall be Nairobi.
- iii. J N I (Brother to the male Applicant) is hereby appointed legal guardian of the child in the event that the Applicants die or are incapacitated by ill-health.
- iv. The Registrar General is directed to enter this order in the Adoption Register.
- v. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.
- vi. The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **15th day of September 2016**.

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L. A. ACHODE

JUDGE