



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 194 OF 2014 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
IN THE MATTER OF ADOPTION OF BABY B A.K.A. J W M

BY

K M W AND F W M (APPLICANTS)

JUDGMENT

1. The Applicants K M W and F W M are in a monogamous marriage which was solemnized at the [Particulars withheld] Central Church in Nairobi on 12th March, 2005. They have no child of their own. They wish to adopt the child known as Baby B A.K.A. J W M a minor of female sex, through the Originating Summons dated 14th August, 2014. From the pleadings the court gathers that both Applicants are self-employed businessman and woman respectively. They reside in Ruai and are both Christians.
2. Records indicate that the minor in this matter was born to M N W and D A A at Kware in Ongata Rongai on 1st March, 2011. The parents offered the child for adoption through the Kenya Children's Home Adoption Society on the same day on grounds that they have other three children and are not able to cater for an additional child.
3. On 11th June 2011 the Children's Court at Nairobi committed the child at the T B House for care and protection vide C&P case No. 163/2011. On 18th April, 2011 six weeks after the birth of the child, the final consent of the biological parents was obtained as required by law.
4. There being no change of mind of the birth parents, the child was declared free for adoption on 12th July, 2011 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 20th July, 2011. Upon their signing 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 5th November, 2015 recommending the adoption for reasons that the child stands to gain the opportunities provided by becoming the daughter of the Applicants and growing up in a loving family setting rather than growing up in an institution since her

birth parents do not have the ability to raise her. The guardian ad litem, Mr. S B O 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. It is important to note 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. According to the report of the Director Children Services, they have proved during the placement period prior to adoption that they are mature, responsible and emotionally capable of taking on the challenge of raising the child in this matter.

10. Secondly, the Applicants 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 by the adoption order sought.

11. Due process having been followed in declaring the child free for adoption, 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 14th August, 2014 and order as follows:

- i. The Applicants, K M W and F W M are hereby allowed to adopt Baby **B A.K.A. J W M** who shall henceforth be known as **J W M**.
- ii. Her date of birth is 1st March, 2011 and the place of birth shall be Ongata Rongai.
- iii. J N (sister to the female 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