



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
ADOPTION CAUSE NO. 16 OF 2015

IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF CHILD BD

JUDGMENT

INTRODUCTION

1. By Originating Summons dated 24th April 2015, the applicant spouses – the 1st applicant a Swiss national with resident status in Kenya under Entry Permit Class K which has been renewed from time to time his current permit being valid for 4 years from the 28th May 2012 and the 2nd applicant a Kenyan citizen - seek an order that they be authorized jointly to child BD; that the child's name becomes on adoption BDK; and that a legal guardian be appointed for the child and such other orders as the court may deem fit to make.

JURISDICTION TO MAKE AN ADOPTION ORDER

2. Under section 163 of the Children Act, the court before making an order of adoption is required to satisfy itself of certain matters as follows:

“163. (1) The court before making an adoption order shall be satisfied—

(a) that every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(b) that the order if made will be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child, and to the ability of the applicant to maintain and educate the child;

(c) that the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;

(d) that any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;

(e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of

the child has expressed willingness to do so; and

(f) that both the applicant and the child have been assessed and evaluated by a registered adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court.”

3. Finally, the court on making an adoption order has further power to appoint a guardian for the child as provided for under section 164 of the Children Act as follows:

“164. (1) The court at the time of making an adoption order *may upon the application of the adopter, or of its own motion or in the case of applicants for an international adoption shall appoint any person approved by the adopter and whose prior consent thereto has been given in writing to be the guardian of the child in the event of the adopter, or both of the adopters where two spouses have applied for the adoption order, dying or becoming incapacitated before the child is of full age.*

(2) The court may, at any time before the child is of full age, on the application of the adopter, or of the guardian appointed under subsection (1) or of the child, revoke such appointment and appoint any other person to be the guardian of the child.”

THE CHILD

4. The Child named BD is a 17 year old 11 months (DOB 13th July 1997) African female child in good health whose biological mother is the 2nd applicant. She was declared free for adoption by the Little Angels Network on the 27th February 2015 and she has consented to the proposed adoption. The child is the 2nd applicant’s child from a previous relation which did not result in marriage.

THE PROSPECTIVE PARENTS

5. The applicants are spouses, a pensioner and a organic farmer, aged 77 and 31, respectively. The 1st applicant is a Swiss national who came to Kenya in 1994 as advisor (now retired) of the Swiss Government, and is a holder of a resident permit. The 2nd applicant is Kenyan. They married on 1st August 2006 and are residents of Kenya at Shanzu, Mombasa. They have one biological son and an adopted daughter. They have legal guardianship order over the child herein together with her biological brother KP by virtue of an order made by the Tononoka Children Court in case no. 23 of 2009 on the 7th December 2009. The applicants have also sought to adopt the child KP in separate proceedings, Adoption Cause No. 17 of 2015, which was heard together with this Cause.

CONSENTS AND APPROVALS

6. The consent of the biological mother has been signified in statement before the court as the 2nd applicant and the consent of the child herself is also signified in a letter dated 24th May and oral testimony of the child before the court. The proposed legal guardian for the child, for purposes of section 164 of the Children Act, has given his consent dated 13th May 2014.

POST-ADOPTION STATUS OF THE CHILD.

7. The object of the adoption, the type commonly known as family adoption, is to secure for the child the same rights as enjoyed by her siblings in the marriage relationship between her biological mother (2nd Applicant) and her husband (1st applicant) who has agreed to take paternal responsibility over the children of the 2nd applicant in the same manner as their biological son and their adopted daughter. The child has lived with the applicants since their marriage in 2006 and the 1st applicant has paid for her school fees as well as provided for her in accordance with his assumed paternal responsibility.

STATUTORY REPORTS

8. The Guardian *ad litem*, Mr. A M I K, Little Angels Network adoption society and Ms. Elizabeth Mbuka, Principal Children's Officer, Mombasa on behalf of the Director of Children Services, respectively dated 23rd June 2015, 27th February 2015 and 2nd July 2015 on the proposed adoption all which were positive in recommending the adoption to be in the best interest of the child.

OBSERVATIONS AND FINDINGS OF THE COURT

9. The Court heard the testimony of the applicants, the child, the guardian *ad litem*, the representative from the Little Angels Network adoption society, Ms. Ann Wamuyu, and considered the Children Officer's Report. The child lives with the applicants whom she considers her parents, with the 1st applicant taking parental responsibility over the child and providing for her needs. The best interest of the child must lie in the continued life as a member of the applicants' family so that she continues to benefit as a legal dependant of the applicants.

10. Accordingly, I find that it is in the **best interests of the child**, to allow the adoption so that she becomes a lawful child of two applicants with full rights as accrue to other children of the applicants, on the basis of marriage of the applicants and the assumption by the 1st applicant spouse of parental responsibility over the child.

ORDERS

11. Accordingly, the final orders in Originating Summons dated 24th April 2015 are granted as prayed. The Orders of the Court will issue in the full names of the applicants and the child.

EDWARD M. MURIITHI

JUDGE

DATED AND DELIVERED THIS 6TH DAY OF JULY 2015.

In the presence of: -

Mr. Njoroge for the Applicants

Musundi - Court Assistant.