



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 18 OF 2013

IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001

AND

IN THE MATTER OF ADOPTION OF P A A also known as BABY R (A Child)

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY P A A BY R L
A THE APPLICANT

JUDGMENT

The applicant herein **R L A** filed in the High Court this originating summons dated 5th November, 2013 seeking the following orders

“(1) Pursuant to the provisions of SECTION 159 OF THE CHILDREN ACT 2001 the Honourable Court be pleased to dispense with the requirements of the consent to the adoption as required by the provisions of SECTION 158 OF THE CHILDREN ACT, 2001.

(2) The applicant R L A be authorized to adopt P A A also known as BABY R a child.

(3) Upon the making of the adoption order, the child be known as N P A.

(4) Upon the making of the adoption order C A O be appointed as Guardian of the child as provided for by the provisions of SECTION 164 OF THE CHILDREN ACT, 2001.

(5) Upon the making of the adoption order, the Registrar General do make an entry recording the adoption and the date of birth of the child as 30th March, 2011 in the Adopted Children Register as provided for by SECTION 170 OF THE CHILDREN ACT, 2001.

(6) The costs of this application be costs in the cause.”

The application was disposed of by way of vive voce evidence. On 18th December, 2013 the court approved the appointment of **MS. I A O** as ‘Guardian ad Litem’ in the matter. The applicant gave her evidence on 16th July, 2014. The prerequisites for the granting of an adoption order are contained in section 156 (1) of said Act which provides

“No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”

In this case the subject child whose given names were ‘P A’ was estimated to have been born on 30th March, 2011. She was therefore aged about 2 ½ years old in November, 2013 when this application to adopt her was filed. She was therefore well above the six week age limit provided for by section 156(1). Annexed to the application is a certificate serial No. [particulars withheld] dated 16th November, 2011 declaring the child Free for Adoption. This certificate was issued by the “*Little Angels Network*” which is a registered adoption agency I am satisfied that the prerequisites for adoption have all been met and that this matter is properly before the court.

THE APPLICANT

The applicant is a 43 year old single woman who has no child. In her evidence the applicant told the court that she was once in a relationship and had one child who unfortunately passed away at the age of 5 years in the year 2001. The relationship she was involved in did not work out and she never bore another child. The applicant now seeks to adopt a child in order to have her own family unit. I have carefully perused the Social Report prepared by the Adoption Agency. The applicant was born and raised in Mombasa by a single mother. She has one sister with whom she retains close ties. Her mother and sister are both supportive of her intention to adopt a child. The applicant is a business woman and breeds dogs which she then sells. She earns a comfortable living of about Kshs. 40,000/= per month. This is sufficient to provide for the education, health and other needs of the child. She lives in a rented house in Kiembeni – Mombasa. The house is large and served by utilities. The house is ideal for raising a young child. The applicant is a committed Christian and intends to raise the child in the Christian faith. She has obtained a certificate of good conduct from the Kenya Police showing that she has had no criminal antecedents. The applicant is in good health both physically and mentally. She is perfectly capable of meeting the joys and challenges of raising a child.

I did observe the demeanour of the applicant here in court. She struck me as a mature woman who had genuine love for the child and had a desire to provide the child with a good home. The applicant assured me that she fully understood the legal implications of an adoption order and that she was ready and willing to provide the child with all the rights due to a biological child. I am satisfied based on the material placed before me that the applicant is a suitable adoptive parent.

THE CHILD

The child ‘*Baby P A*’ was found abandoned in the Barsheba area in Mombasa on 30th March, 2011. A good Samaritan rescued her and the matter was reported to Nyali Police station. The child was taken to Coast Provincial Hospital for examination, assessment and treatment. Thereafter the baby was placed at the Baby Life Rescue Centre in Mombasa. From the time of her abandonment the child remained unclaimed for six (6) months and more. A report from Nyali Police station dated 7th November, 2011 indicates that no person has come forward to claim the child. There is therefore no person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 159 (1) (a) of the Children Act.

THE APPLICATION

Section 4(a) of the Children Act obliges a court to give priority to the ‘*best interest*’ of the child. The child was abandoned indicating that her birth mother was unable and/or unwilling to care for her. She was placed in the custody of the applicant under a Fostering Agreement in November, 2011. From that time the child has lived under the custody and care of the applicant. No doubt the two have bonded. I have perused the Home Report which indicates that the child has settled and adapted well to her new home. I saw the child in court. She was a smart, clean, well groomed, healthy and happy child. I have no doubt that she is receiving excellent care. The child views the applicant as her mother. To allow such a child the chance to be raised in a good home with a loving and committed parent undoubtedly serves the

best interests of the child. I therefore authorize this adoption. I do allow the Originating Summons dated 5th November, 2013 in terms of prayers (1), (2), (3), (4) and (5) thereof. No order on costs.

Dated and delivered in Mombasa this 10th day of September, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Mutugi h/b Mr. Njoroge

Court Clerk Mutisya