



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 83 OF 2018

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF THE ADOPTION OF

MBS ALIAS SBS AND SBS TO BE ADOPTED BY

BJS1ST APPLICANT

AND

SDS.....2ND APPLICANT

JUDGMENT

The Applicants, BJS and SDS sought by their Application filed on 3rd July 2018, orders of this court allowing them to adopt MBS alias SBS and SBS. The Applicants are husband and wife. They celebrated their marriage on 28th August 1986 as per the marriage certificate attached. The 1st Applicant is a businessman and the 2nd Applicant is a medical doctor.. Both Applicants live together in Nairobi.

The Applicants sought orders that;

- a) The Court issues an order(s) stating that the adoption of the Applicants herein is recognized in Kenya and the Applicants herein are now recognized as Kenyan citizens.
- b) That the Court directs the Department of Immigration to issue a Kenyan Identity Card and Kenyan Passport to both Applicants.
- c) That in the alternative or in addition to the above , the Applicants be accorded all rights as Kenyan citizens as SBS and MBS were adopted by Kenyan parents in 1992 and 1998 respectively and they have lived in Kenya since then.
- d) That the order that will be issued by this Court shall state that MBS is now known as SBS as this name is the one that reflects in all his official documents since the Applicants began living.

The children were born in Mumbai India and the children were adopted in City Civil Court at Bombay and deeds of Adoption were issued on 18th December 1992 and 14th December 1998 for the children.

BJS 1st Applicant filed Witness statements on 3rd July 2018 and 19th September 2018 and stated thus;

That he married SDS on 28th August 1986 as per marriage certificate annexed **BJS1**. They adopted SBS and MBS and they have lived together in Kenya from 1992 and 1998 respectively. BJS parents; mother VJB of ID [xxxx] and father JRKS of ID [xxxx] were Kenyan citizens by registration. He attached the copies of ID cards as **BJS 2a & 2b** and copies of registration certificate marked **BJS 2c** in the name of VJR born in Haripar India on 1934 is registered as a citizen of Kenya under **Section 91 of Constitution of Kenya**. On the basis of his Kenyan citizenship by registration and by marriage, their adopted children should be also registered as Kenyan citizens.

SDS 2nd Applicant filed Witness statement of 19th September 2018 and stated as follows;

That she is married to the 1st Applicant to BJS and as per attached marriage certificate. Her father RJDD was a Kenyan citizen by

registration annexed is **SDS1** copy of registration certificate dated 4th January 1971 and her father is registered as a citizen of Kenya under **Section 92(1) Kenya Constitution and the Kenya Citizenship Act 1963**.

The 2nd Applicants mother MRJD is a Kenyan citizen by birth, annexed an affidavit sworn on 10th February 2014 and certificate of birth dated 25th March 1952 marked **SDS 2a & 2b**.

The 2nd Applicant and 1st Applicant adopted 2 children; SBS and MBS and have lived together in Kenya since 1992 and 1998 respectively.

SBS filed on 3rd July 2018 an affidavit and Further Affidavit on 19th September 2018. She attached Documents of her adoption as daughter of the Applicants from India. These are copies of proceedings from **City Civil Court at Bombay in Miscellaneous Application 61 of 2017 in Miscellaneous 275 of 1992** marked as **SBS 1a** and orders are as follows;

1. *“Misc Application No 61/2017 is allowed*
2. *The Petitioner is directed to register the deed of adoption of female SBS in the office of Sub Register of Assurances, Mumbai as prayed.*
3. *The Concerned Municipal Authorities are directed to issue certificate in the name of adoption female child SB who was born on 10th July 1992 as daughter of Mr. BJS and Mrs S w/o BS as parents of the said minor.*
4. *The Applicant to pay requisite charges to Municipal Authorities.*
5. *Misc Application 61/17 disposed off accordingly.”*

SBS filed **DEED OF ADOPTION** of 30th November 1992 **SBS 1b**. She also attached ID card of her father BJRS ID [xxxx] and mother SRD ID [xxxx] and also her dependent’s pass no [xxxx] issued on 15th April 1993 and Police Clearance Certificate of 7th February 2018. She attached documents to confirm that she undertook her studies in Kenya; copies of reports from [particulars withheld] Junior Academy, Nairobi Academy, [particulars withheld] Academy, [particulars withheld] School and [particulars withheld] School all annexed as **SBS 1a 1b 1c 1d & 1e**. Her parents and grandparents are Kenya citizens by registration and/or by birth. She applies to be adopted by her parents as Kenyan citizens and to be granted leave to be registered as a Kenyan citizen.

MBS filed Further Affidavit on 19th September 2018 and stated as follows;

He was born on 26th February 1998 in India and after legal process of his adoption he relocated to Kenya and has lived with his parents BJS and SDS from 1998 to date.

He attended [particulars withheld] Kindergarten in 2004, [particulars withheld] School, [particulars withheld] Academy and [particulars withheld] Secondary School. Attached are copies of **School reports marked MBS 1 2 3 3a & 3b**.

His parents and grandparents are Kenya citizens by registration and/or by birth. She applies to be adopted by her parents as Kenyan citizens and to be granted leave to be registered as a Kenyan citizen.

On 22nd November 2018 all the parties, Applicants and children appeared in Court with Counsel.

DETERMINATION

The Court has considered the pleadings filed and documents submitted to the Court for consideration. The issue for determination is whether the Children SBS and MBS shall be legally adopted by Applicants BJS and SDS in Kenya and thereby be declared Kenyan Citizens by adoption?

The law pertaining to adoption of a child adopted outside Kenya under Children Acct 2001 is as follows;

157. Children who may be adopted

“(1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya:

Provided that no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant within the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants, as the case may be evaluated and assessed by a registered adoption society in Kenya.”

163. Powers of the court

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

(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;

165. Adoption order in respect of children previously adopted

“(1) An adoption order or an interim adoption order, may be made in respect of a child who has already been the subject of an adoption order under this Act or under any other Act or Ordinance for the time being in force in any country in the Commonwealth.”

176. Effect of overseas adoption

“(1) Where a person has been adopted (whether before or after the commencement of this Act) in any place and the adoption is one to which this section applies, then, for the purposes of this Act and all other written laws, the adoption shall have the same effect as an adoption order validly made under this Act, and shall have no other effect.”

With Regard to the Applicants a cursory glance at the documents filed, BJS is Kenyan by registration and marriage. His parents were registered Kenyan citizens in 1968 and 1987 respectively. He is married to his wife SDS who is Kenyan by registration her father in 1971 and by birth as her mother was born in Kenya in 1952. Therefore the Applicants are Kenyan citizens and may adopt the children SBS and MBS who have demonstrated that they have been continuously in Kenya from 1992 and 1998 respectively from the attached school records. Section 157 of the Children Act 2001 is complied with as it is not mandatory to have a registered Adoption Society evaluate the parties. The word ‘may’ and not ‘shall’ is used in the provision.

Secondly, from the documents filed and interacting with the children in Court, the Applicants have taken reasonably good care of the children from when they were minors and approaching adulthood. Hence formalizing the children’s stay and life with Applicants in the adoption process it would be in the welfare and best interests of the children and in compliance with **Article 53 (2) COK 2010 and Section 4 of Children Act 2001.**

Thirdly, there are notarized copies of the adoption documents, court proceedings and order from Civil Court Bombay and deed of adoption for SBS which by virtue of Section 176 of Children Act is recognized as a valid court adoption order of SBS and SDS of SBS.

However, with regard to MBS, the Court did not find filed documents of the adoption of MBS to confirm legal adoption undertaken outside Kenya so as to adopt the same on behalf of the Child’s adoption to the Applicants in Kenya.

DISPOSITION

After careful examination of the documents presented, it is the opinion of the court that this Adoption would be in the best interest of the child. Hence, this Court allows the Applicants’ application in part as follows;

- 1. The application of 3rd July 2018 is partly granted and partly dismissed.**
- 2. The adoption of MBS is not granted at this stage as documents of his adoption were not availed and filed in Court for the Court to adopt the same. The said Child Shall remain in the sole custody of BJS and SDS as parents to the child until relevant documents are filed and the matter regularized. The Applicants shall continue to have legal custody of the said child and exercise parental responsibility as provided by Section 161(2) of Children Act 2001.**
- 3. The adoption of SBS, daughter to BJS and Samira DS as parents is granted by adoption of Court order of Bombay City Civil Court. Which is adopted by this Court by virtue of Section 176 of Children Act 2001.**
- 4. That the Court directs the Department of Immigration to issue a Kenyan Identity Card and Kenyan Passport to SBS.**
- 5. The Court directs the Registrar General to duly enter this order in the Adoption Children Register.**
- 6. Any party aggrieved may file appeal to Court of Appeal.**
- 7. Parties to bear own costs.**

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20th DAY OF DECEMBER 2018.

M.W. MUIGAI

JUDGE

IN PRESENCE OF:-

KAGWE GITHINJI ADVOCATES FOR APPLICANTS

