



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO 267 OF 2014
IN THE MATTER OF THE CHILDREN ACT
AND
IN THE MATTER OF BABY H R

P P Y1ST APPLICANT

T A M Y.....2ND APPLICANT

JUDGEMENT

Before this Court is an application for international adoption by P P Y, hereafter “the 1st Applicant”, and T A M Y, hereafter “the 2nd Applicant”, in which they seek to be allowed to adopt Baby H R, hereafter “the child”. Both Applicants are Finnish citizens and they were married on 7th August 2004. The 1st Applicant is currently employed by [*particulars withheld*] in Hammenlina, Finland as a [*particulars withheld*] manager while the 2nd Applicant is a housewife cum [*particulars withheld*] in the same town. The Applicants’ marriage has thus far not been blessed with children of their own due to medical reasons. They wish to adopt a child. In this regard, the Applicants approached the relevant authorities in Finland with a view to securing the requisite approvals to enable them adopt a child, specifically a foreign child.

The applicants were investigated by the City of Helsinki, Social Services and Health Care Committee in Finland. Under Finnish adoption laws, City of Helsinki is the said local authority that has jurisdiction to approve the application by applicants to adopt a child. The said authority granted its permission and the same is proved by a letter dated 6th February 2013. The National Supervisory Authority for Welfare and Health which is in-charge of The Finnish Adoption Board, the Central Authority that administers The Hague Convention on Inter-country Adoption, also granted permission to the applicants to adopt a child from Kenya. The approval is dated 24th October 2013. The National Adoption Committee of Kenya duly approved the application by the Applicants to adopt a child in Kenya. A certificate dated 29th April 2014 was issued to that effect.

The child who is the subject of the present adoption proceedings was born on 22nd March 2013 at Tenwek in Bomet. The child was found abandoned and was taken to Tenwek District Hospital for medical attention. A report on the matter of the abandoned child was made to Bomet Police Station, where it was recorded vide OB No 26/5/4/2013. The child was then referred to the Africa Gospel Church Baby Centre in Nakuru, where the child was subsequently admitted on 1st May 2013 for care and protection.

The Children's Court at Nakuru, in accordance with **Section 119** of the **Children Act**, committed the custody of the child to Africa Gospel Church Baby Centre, Nakuru on 21st August 2013 vide P & C No 516/2013. The child was placed in the custody of the Applicants on 14th August 2014 for mandatory foster care prior to adoption. The child has since then been in the continuous custody and care of the Applicants. According to correspondence from the police authorities in Bomet, no one has come forward to claim the child. A letter to that effect has been filed in Court. Hence, in accordance with **Section 159(1)** of the **Children Act**, this Court dispenses with the consent of the child's biological parents to the proposed adoption by the Applicants. Kenya Children Homes Adoption Society issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The said certificate is no. 1106 and the same is dated 18th June 2014.

The Applicants filed an application for adoption on 17th November 2014 seeking, among others, orders from this Court that A K be appointed as the guardian ad litem, and that the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report on the same. The Applicants also sought to have the Court appoint M S Y and T K T, the 1st Applicant's twin sister and brother-in-law respectively, and to order that upon adoption the child be known as A H M Y. On 10th December 2014, this Court issued an order appointing A K as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to file their respective reports in Court.

This Court read the reports prepared by Kenya Children Homes, the local adoption society, the Social Welfare Committee City of Helsinki, the Director of Children's Services and by A K, the guardian ad litem. All the above reports are favourable and recommend the Applicants' application to adopt the child. This is an international adoption. There are certain conditions that the Applicants must fulfill before this Court can allow them to adopt the child. The first condition is that the Applicants must be approved by the relevant adoption authorities in their country of origin. In the present case, the Applicants have been assessed and approved by the relevant authorities in their country of origin, Finland. This Court had the benefit of reading the report prepared by the Social Welfare Committee of the City of Helsinki. This Court is satisfied that the Applicants have been approved by the relevant authorities in Finland to adopt a foreign child, and specifically a Kenyan child. The second condition is that the Applicants must be approved by the National Adoption Committee in Kenya to adopt a child in Kenya. In the present case, the Applicants have been approved by the said National Adoption Committee. A certificate was issued by the said committee approving the Applicants' application to adopt a child in Kenya.

The third requirement that the Applicants must satisfy the Court is that they have fulfilled the legal requirements regarding the adoption, including having custody of the child for a sufficient period to enable bonding to take place. This period must not be less than three (3) months. It is clear to the Court that the Applicants have fulfilled all the legal requirements in respect of international adoption. The Applicants have had the custody of the child since 14th August 2013. In the period that the child has been in their custody, the child has bonded well with them. This was evident from the reports prepared by the Director of Children's Services, the guardian ad litem and the local adoption society. The Applicants have established that they have the financial and emotional capability to take care of the child. The Court observed the Applicants and the child when they attended Court, and it has formed the opinion that the child is thriving under the care of the Applicants.

Having evaluated all the reports on record, and the Applicants' application seeking to be granted permission to adopt the child, it was clear to this Court that it would be in the best interest of the child for the application for adoption to be allowed. The Applicants have given an undertaking that they shall allow access to the approved Adoption Society in Finland to undertake post-adoption supervision for a period of three (3) years from the time of the issuance of an adoption order. The Applicants have made an undertaking that if this Court grants the adoption order: they will permanently assume all the parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if she was born to them in their marriage; they have been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that they shall adopt; the child shall have the right to inherit their property; an adoption order cannot be recanted; and also, they shall not give

up the child owing to any subsequent unforeseen behaviour or other changes in the child.

Moreover, the Applicants are aware and have agreed that the adoption society in Finland (foreign adoption society) shall provide annual follow up reports on the progress of the child to the Adoption Society in Kenya (local adoption society) for a period of three (3) years from the date of the arrival of the child in Finland. They have also undertaken to allow the representatives of the Foreign Adoption Society in Finland free access to the child at any reasonable time. The Applicants further give an undertaking that they shall accord their citizenship to the child.

In the final analysis, therefore, this Court finds that the Applicants have met the criteria set for international adoptions and also that the adoption will be in the child's best interests. The Applicants, P P Y and T A M Y are hereby authorized to adopt Baby H R. The child shall henceforth be known as A H M Y. Her date of birth shall be 22nd March 2013. Her place of birth shall be Tenwek in Bomet, Kenya. She is presumed to be a Kenyan citizen by birth. M S Y and T K T, the 1st Applicant's twin sister and brother-in-law respectively, are hereby appointed as the legal guardians of the child should such eventuality arise. The Registrar General is hereby directed to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF MARCH 2015

M. MUIGAI

JUDGE