

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 7 OF 2015

IN THE MATTER OF CHILDRENS ACT CAP 141

AND

IN THE MATTER OF BABY E T

C L K1ST APPLICANT

A A M K.....2ND APPLICANT

JUDGMENT

The applicants C L K and A A M K made an application before this court seeking adoption of baby E T. The applicants are Canadian nationals and have been married since 3rd September 2005. The first applicant is a Pastor at *[particulars withheld]* in Canada and the second applicant is an *[particulars withheld]* in government at the Department of Child and Family Services in Canada. The applicants have not been blessed with children due the first applicant's medical condition. The applicants resorted to raising a family through adoption. The applicants expressed their wishes to Mission of Tears Canada, an adoption agency which assessed and approved them to be favorable to adopt a foreign child. Their application was sent via Little Angels Network, a local adoption society and the same was approved by National Adoption Committee of Kenya. The Ministry of Children and Youth Services of Canada confirmed that the Canadian Constitution recognizes inter-country adoptions and will recognize the adoption order as having the same effect as the adoptions carried out in their jurisdiction. The Canadian government will grant citizenship to the adopted child from Kenya.

Baby E T was abandoned in a hotel at Kibuye market in Kisumu on 11th November 2013. He was presumably born on 14th June 2013. The matter was reported to Kondele Police Station on the same day with OB no. 65 of 11th November 2013 and was placed under care and custody of New Life Home Trust in Kisumu on the 12th of November 2013. The child was committed to the same home by the Principal Magistrates Court at Winam vide Protection and Care Case No. 13/2014 on 15th of January 2014. Kisumu District Children's Office confirmed the same committal of the child to New Life Home Trust. The police traced the relatives of the child but all in vain. The child was declared free for adoption by Little Angels Network, an adoption society and a certificate to the same was issued on the 28th May 2014. The child was placed under the mandatory custody to the applicants on 11th October 2014 and have stayed with her ever since. The court appointed B O as the guardian ad litem on the 10th of February 2015.

Reports were made by the guardian ad litem, Little Angels Network and the Director Children's Services prior the adoption hearing. The court evaluated the same. This being an international adoption, there are pre-requisites that have to be met before granting the same according to **section 162 of the Children's Act**. The first pre-requisite is the consent of the parents or relatives has to be sought. The court evaluated all the reports made by Little Angels Network and guardian ad litem respectively and they both confirm that the child was abandoned at the hotel in Kibuye market in Kisumu. The matter was reported to the police with OB No. 65 of 11th November 2013. Traces of the relatives were done for six months but all in vain. For this case, the consent of the parents or relatives is dispensed with pursuant to **section 159(1) (a) (i) of the Children's Act**.

As regards the second pre-requisite, the applicants were assessed by the adoption agency Mission of Tears Canada, approved them to be favorable parents and can proceed to adopt a foreign child. The Ministry of Children and Youth Services made an assurance that the Canadian Constitution recognizes inter-country adoptions and orders made there under. The child for that matter will be granted citizenship once the adoptions have been finalized in Kenya. This indicates that the applicants have satisfied this condition.

The third pre-requisite was satisfied according to the reports made by the Director Child and Family Services, Manitoba, the adoption agency Mission of tears, Canada and guardian ad litem, District Children's Services. The foreign adoption agency mission of tears assessed the applicants and approved them to be emotionally fit and stable to adopt a foreign child. The applicants were approved by the director of child and family services in Manitoba as favorable parents for adoption. The applicants have no criminal record according to the certificates from Winnipeg Police Service dated 20th and 23rd July 2012, certificates from Royal Canadian Mounted Police and Interpol Ottawa, National Central Bureau dated 16th July 2012. During the home visits, the guardian ad litem observed that the child had bonded well with the applicants. He was in good care of the applicants and had a positive growth socially, physically and emotionally. The applicants put the child under medical observation because he suffers from eczema. The guardian ad litem found them to be fit and favorable to adopt the child and so was the Director Children's Services according to her report.

The court finds that the applicants have met the criteria of international adoptions and it would be in the child's best interest if he was adopted. The court makes the orders that the applicants shall assume the responsibilities of parents to the child as one born in marriage. The child shall be entitled to inherit from the property of the applicants and shall not be given up because of any eventualities that might result; like bad behavior. The applicants shall grant the adoption society access in their country to perform the post-adoption supervision for a period of three (3) years and at any reasonable time and shall give this court guarantee that the child shall be granted citizenship once adoption is finalized. The annual reports shall have to be availed by the adoption society in Canada for a period of three (3) years.

Adoption of the child is hereby granted to C L K and A A M K, the applicants in this matter. The child shall be known as E J K alias E. His date of birth shall be 14th June 2013 and the place of birth shall remain Kisumu. Should any misfortune occur, the child's legal guardians shall be J and L P of *[particulars withheld]* Collegiate Street, Winnipeg, Manitoba. The guardian ad litem is hereby discharged. The Registrar General should thereby enter the order of adoption. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF APRIL 2015.

M. MUIGAI

JUDGE