



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

ADOPTION CAUSE NO. 56 OF 2015

IN THE MATTER OF CHILDRENS ACT CAP 141

AND

IN THE MATTER OF BABY B M

P U R.....1ST APPLICANT

C C W.....2ND APPLICANT

JUDGMENT

The Applicants P U R and C C W made an application before this court seeking adoption of baby B M. The Applicants are Germans and have been married since 2005. The first Applicant is an Industrial Engineer in *[particulars withheld]* Industries and the second Applicant is a Professor of Literature. The Applicants have not been blessed with children in their marriage for medical reasons. The Applicants resorted to raising a family through adoption. The Applicants expressed their wishes to Help A Child-Germany, an adoption agency which assessed and approved them to be favorable to adopt a foreign child. Their application was sent via Kenyans to Kenyans Peace Initiative (KKPI), a local adoption society and the same was approved by National Adoption Committee of Kenya. The **Joint Central Adoption Agency- Rheinland-Pfalz and Hassen** confirmed in their letter dated 8th October 2013 that the Germany recognizes foreign adoptions under **Section 6 of the German Nationality Act** as having the same effect as the adoptions carried out in their jurisdiction. The child is guaranteed of citizenship once adoption is finalized in Kenya.

Baby B M was abandoned by the mother to one V W in Madharau Area within Makongeni in Thika. He was presumably born on 15th of April 2012. The matter was reported to Thika Police Station vide OB no. 23/22/04/2012. He was placed under care and protection in Karibu Babies Centre. The Resident Magistrates Children's Court in Nairobi committed the child to Karibu Baby Centre vide Protection and Care Case No. 185 of 2012 on 10th October 2012. The Police with their letter dated 20th of October 2012 confirmed that tracing of the relatives was done for six months but all in vain. The child was declared free for adoption by Kenyans to Kenyans Peace Initiative (KKPI), an adoption society and a certificate no. 418 was issued on the 27th of August 2014. The child was placed under the mandatory custody to the Applicants vide foster care agreement form dated 24th November 2014. The court appointed T O A as the guardian ad litem through an order dated 30th March 2015.

Reports were made by the guardian ad litem, Kenyan to Kenyan Peace Initiative (KKPI) and the Director

Children's Services prior the adoption hearing. The court evaluated the same and they were recommending the adoption. 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 Kenyans to Kenyans Peace Initiative (KKPI) and guardian ad litem respectively and they both confirm that the child was abandoned by the mother to one V W in Madharau Area within Makongeni in Thika. The matter was reported to Thika Police Station vide OB no. 23/22/04/2012. The Police with their letter dated 20th of October 2012 confirmed that tracing of the relatives was 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 a foreign adoption agency Help A Child- Germany who approved them to be favorable parents and can proceed to adopt a foreign child. The **Joint Central Adoption Agency- Rheinland-Pfalz and Hassen** confirmed in their letter dated 8th October 2013 that the Germany recognizes foreign adoptions under **Section 6 of the German Nationality Act** as having the same effect as the adoptions carried out in their jurisdiction. The child is guaranteed of citizenship once adoption is finalized in Kenya. This signifies that the Applicants have satisfied this condition.

The third pre-requisite was that the Applicants were assessed and found to adopt as shown by the reports made by the foreign adoption agency Help A Child- Germany, guardian ad litem, and District Children's Services. The foreign adoption agency Help A Child- Germany assessed the Applicants and approved them to be emotionally fit and financially stable to adopt a foreign child. The Applicants were approved by as favorable parents for adoption. The Applicants have no criminal record according to the certificates from the Federal Office of Justice, Germany dated 17th September 2013. A home study by Help A Child- Germany found them suitable, capable and willing to adopt. The District Office Ludwigsburg confirmed that the applicants are fit to adopt a child from Kenya in their letter dated 5th December 2013. The Department of Administrative Services Ludwigsburg affirmed that it does not have any reservations against the entry and adoption of a foreign child by the Applicants.

Locally, the Applicants were affirmed by the Adoption Agency, Kenyans to Kenyans Peace Initiative (KKPI) in the report filed on 12th March 2015 and Adoptions Committee sitting on 22nd July 2014 vide approval certificate no.00535 of 19th August 2014.

During the home visits, the guardian ad litem observed that the child had bonded well with the Applicants. The child has learnt how to communicate in German. He was in good care of the Applicants and has had a positive growth socially, physically and emotionally. The guardian ad litem approved 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. Help A Child, a foreign adoption society has guaranteed court that it shall carry out post adoption supervision and shall avail reports of the same for a period of three (3) years.

Adoption of the child is hereby granted to the Applicants P U R and C C W in this matter. The child shall be known as B S R. His date of birth shall be 15th of April 2012 and the place of birth shall remain Mankogeni- Thika. He is presumed to be a Kenyan citizen by birth. Should any misfortune occur, the child's legal guardians shall be S K H and I U H (close friends of the Applicants). 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 19TH DAY OF JUNE 2015.

M. MUIGAI

JUDGE