



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
ADOPTION CAUSE NO. 37 OF 2014
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY VS

JUDGMENT

INTRODUCTION

1. By Originating Summons dated 16th December 2014, the applicant spouses – the 1st applicant a German national of Kenyan descent and the 2nd applicant a Kenyan citizen - seek an order that they be authorized jointly to adopt Baby VS; that the child's name remains VS; and that the Registrar General be directed to make the appropriate entries in the Adopted Children's Register, as provided for under section 170 of the Children Act. This is a repeat adoption application having originally been filed and an adoption order made by the High Court at Busia on 2nd April 2013, which was rejected by the National Adoption Secretariat for non-compliance with the International adoption regulations for filing in the High Court at Nairobi and Mombasa.

JURISDICTION TO MAKE AN INTERNATIONAL ADOPTION ORDER

2. Pursuant to section 162 of the Children Act –

“162. An adoption order may be made in respect of a child upon the joint application of two spouses who are not Kenya citizens and not resident in Kenya (in this Act referred to as an “international adoption”) if they—

(a) have obtained the consents specified in paragraph (e) of subsection 4 of section 158; and

(b) have satisfied the court that the country where they ordinarily reside and where they expect to reside with the child immediately after the making of the adoption order will respect and recognise the adoption order and will grant resident status to the child; and

(c) have been authorised and recommended as persons who are suitable (including being morally fit and financially capable) to adopt a foreign child by a competent government authority or court of competent jurisdiction in the country immediately after the making of the adoption order. ”

3. Under section 163 of the Children Act, the court before making an order of adoption is required to satisfy itself of certain matters as follows:

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

(a) that every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(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;

(c) that the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;

(d) that any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;

(e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of the child has expressed willingness to do so; and

(f) that both the applicant and the child have been assessed and evaluated by a registered adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court.”

4. Finally, the court on making an adoption order has further power to appoint a guardian for the child as provided for under section 164 of the Children Act as follows:

“164. (1) The court at the time of making an adoption order may upon the application of the adopter, or of its own motion or in the case of applicants for an international adoption shall appoint any person approved by the adopter and whose prior consent thereto has been given in writing to be the guardian of the child in the event of the adopter, or both of the adopters where two spouses have applied for the adoption order, dying or becoming incapacitated before the child is of full age.

(2) The court may, at any time before the child is of full age, on the application of the adopter, or of the guardian appointed under subsection (1) or of the child, revoke such appointment and appoint any other person to be the guardian of the child.”

THE CHILD

5. The Child named VS is an 8 year old African female child in good health whose mother - a sister to the 2nd applicant - is deceased. She was declared free for adoption by the Kenya Children’s Homes Adoption Society Case Committee on 17th July 2012.

THE PROSPECTIVE PARENTS

6. The applicants are spouses of Christian faith, residents of Germany both certified to be medically fit with no criminal record and aged 53 and 44, respectively. They are both employed and have reasonable income. They have 3 other children of their own who have consented to the proposed adoption by their parents of their orphaned cousin.

7. The applicants have executed the **Undertaking by Adopters – Foreign Adoption** under the 11th Schedule of Children Act and the organization **Eltern fur Afrika e.V** has give an **Undertaking by**

Foreign Adoption Society under 12th Schedule to make follow up supervisions with reports to local adoption society for a period of three years from the date of arrival in the receiving country.

CONSENTS AND APPROVALS

8. The consent of the surviving biological father of the child dated 16th July 2012 has been given under section 158 (4) of the Children Act and the applicants have demonstrated approvals by the Government of Federal Republic of Germany through the Oberallgaeu District Administration Youth Welfare Office dated 7th March 2012 and the Kenya Adoption Committee on 16th January 2013 for their adoption of the child. The consent of the applicants' other children has also been obtained

POST-ADOPTION STATUS OF THE CHILD.

9. The applicants have demonstrated that the child will upon an Adoption Order be granted resident status in the Federal Republic of Germany where the applicants reside, in accordance with the laws of that Country.

STATUTORY REPORTS

10. The Kenya Children's Homes adoption society and Mr. Zephaniah Apoko, the sub-County Children's Officer, Msambweni on behalf of the Director of Children Services, respectively dated 18th March 2013 and 26th April 2015 on the proposed adoption both which were positive in recommending the adoption to be in the best interest of the child.

OBSERVATIONS AND FINDINGS OF THE COURT

11. The Court heard the testimony of the applicants, the guardian *ad litem*, the representative from the Kenya Children's Homes adoption society and the Children Officer, Msambweni sub-County as well as observed the child in court and its relation with the applicants. From its own observation, the Court agreed with the reports of the guardian, the adoption society and the Children Officer that the child had bonded well with the prospective parents.

BEST INTERESTS OF THE CHILD

12. The child, who lives with her grand-father, has been cared for by the prospective adoptive parents since the death of its mother in 2009 and according to relevant reports has bonded into the applicants' family, which includes another adopted child from Kenya. Having found that the applicants are suitable and able to provide for the needs of child, among others, loving care, a home, maintenance and education, the best interest of the child must lie in the continued life as a member of the applicants' family.

13. Accordingly, I find that it is in the **best interests of the child**, to allow the adoption so that she is provided with a home and loving care of the applicants who are her relatives and who agree to provide for her needs as parents to their child.

ORDERS

14. Accordingly, the final orders in Originating Summons dated 16th December 2014 are granted as prayed.

15. The Orders of the Court will issue in the full names of the applicants and the child.

DATED SIGNED AND DELIVERED THIS 19TH DAY OF JUNE 2015.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

Ms. Kipsang for the Applicants

Linda - Court Assistant.