



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
ADOPTION CAUSE NO. 34 OF 2014
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY J
JUDGMENT

INTRODUCTION

1. By Originating Summons dated 24th November 2014, the applicant spouses citizens of Germany seek principally orders that they be authorized jointly to adopt Baby J upon being declared a Kenyan by birth; that the child be named J.G.S. henceforth; 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 Act.

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 J, an African male child in good health born on 28th April 2013 was abandoned by the mother at the maternity ward at Narok District hospital the same day after delivery, according to Narok Police Station records OB No. [particulars withheld]. The Child was immediately placed with T B Home as a child in need of care and protection on 20th June 2013 and subsequently formally placed with the Home by order of the Children Court Narok in case no. 45 of 2013 on 20th June 2013. By a letter dated 12th November 2013, the Narok Police station confirmed that police investigations to trace the biological parents of the child were fruitless. The Child was declared free for adoption by the Kenya Children’s Homes Adoption Society Case Committee on 18th December 2013 and placed with the applicants on the 21st August 2014.

THE PROSPECTIVE PARENTS

6. The applicants are spouses, citizens of Germany of Christian faith, both certified to be medically fit with no criminal record and aged 41 and 44, respectively. They are both employed and have reasonable income and assets in house, car, and bank assets, among other assets. They have no

child of their own and they have continuously lived with the child the subject of these adoption proceedings since 21st August 2014.

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. They have also appointed legal guardians who have agreed to act as guardians for the child in the event that the adoptive parents died or otherwise became incapable of take care of the Child.

CONSENTS AND APPROVALS

8. The consent of the biological parents of the child under section 159 is waived in view of the circumstances of the case in which the child was found abandoned; and the applicants have demonstrated approvals by the Government of the Federal Republic of Germany dated 11th November 2013 and the Kenya Adoption Committee on 20th May 2014 for their adoption of the child.

POST-ADOPTION STATUS OF THE CHILD.

9. The applicants have demonstrated that the child will upon an Adoption Order, by operation of the law, be granted citizenship and, therefore, become entitled to enter and reside, in the Federal Republic of Germany where the applicants reside, according to section 6 of the German Nationality Law.

STATUTORY REPORTS

10. The guardian *ad litem* Ms. E N, 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, filed respective reports respectively dated 21st April, 2015, 15th December 2014 and 24th April 2015 on the proposed adoption, all 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 and that the adoption should be granted.

BEST INTERESTS OF THE CHILD

12. The child has lived with the prospective adoptive parents since 21st August 2014 and according to relevant reports has bonded into the applicants' family. 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 child has an opportunity to be raised in a home setting, and 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**, whose biological parents have not been found up to the time of this order, to allow the adoption so that he is permanently provided with the suitable home setting and loving care of the applicants with whom he has clearly well bonded as a child to his parents.

ORDERS

14. Accordingly, the final orders in Originating Summons dated 24th November 2014 are granted as prayed.

15. The Orders of the Court will issue in the full names of the Applicants, the Child and the Guardians under section 164 of the Children Act, 2001.

DATED SIGNED AND DELIVERED THIS 12TH DAY OF JUNE 2015.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

Mrs. Kipsang for the Applicants

Mr. Buoro - Court Assistant.