



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ADOPTION CAUSE NO. 178 OF 2015 (OS)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2001
AND
IN THE MATTER OF ADOPTION OF BABY E N
BY
J A V AND F M D G (APPLICANTS)

JUDGMENT

1. The Applicants, **J A V** and **F M D G** are of Dutch origin and in a monogamous marriage which was solemnized at Lochem on 12th September 2009. They have no child of their own. They have brought an Originating Summons dated 8th July 2015, seeking permission to adopt **Baby E N**, an infant of male sex. **J A V** is a Field Sales Manager at [Particulars withheld] while **F M D G** is a Sr. Project Manager at The [particulars withheld] Red Cross.
2. The child who is the subject of this adoption proceedings was retrieved at infancy from a pit latrine by a Good Samaritan on 21st December 2013. He was later taken to Jaramogi Oginga Odinga Teaching and Referral Hospital by the Assistant Chief of South Kapuonja. The matter was reported at Maseno Police Station and an entry made vide OB No. 21/23/12/3013. On 18th February 2014, the child was admitted to New Life Home Trust for care and protection through the help of Kisumu West District Children's Office. On 19th February, 2014 the child was officially committed to the same Children's Home by the Principal Magistrate Children's Court Maseno, vide P&C Case No. 17/2014. A final letter dated 19th September 2014 from Maseno Police Station confirms that no one has gone to claim or inquire after the child.
3. The child was declared free for adoption on 29th October, 2014 by the Little Angels Network Adoption Society vide certificate No. [Particulars withheld]. He was released into the custody of the Applicants for mandatory foster care pending adoption on 7th April, 2015, and the Applicants signed a foster care agreement dated the same day. Since then he has been in the continuous custody and care of the Applicants. Prior to the hearing of the adoption application, Little Angels Network, an adoption Society prepared and filed a report in court.
4. The Adoption Society and guardian ad litem have all made home visits and established that the Applicants are financially and emotionally capable of providing for the up keep and education of the

child. The guardian ad litem, M/s. C W K filed a report that was favourable and recommended the adoption of the child by the Applicants.

5. The Director of Children's Services who cited the moratorium on foreign adoption by the Cabinet, did not file a report. The court notes however, that the Kenya National Adoption Committee, where the Director of Children Services serves as Secretary, on 18th November, 2014 met and approved the applicants' application to adopt a child in Kenya. The decision conveyed was that the committee had found the applicants to be suitable prospective adoptive parents. A certificate of approval was duly issued to them, dated 20th January 2015, signed by, among others, the Director of Children Services.

6. The Kenya National Adoption Committee meeting held on 18th November, 2014, Netherlands Ministry of security and Justice Central Authority in accordance with the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption all confirmed that the Applicants had been approved by the Dutch authorities. According to a Communique from the said office dated 15th July, 2013 and annexed to the Originating Summons, a Kenyan adoption would be recognised immediately in Netherlands and the Dutch Embassy in Nairobi will have authority to issue the child with a Dutch passport upon presentation of the adoption order. The child will at the same time obtain Dutch citizenship.

7. The proposed adoption also received local approval by the Little Angels Network Adoption Society and by the Adoption Committee meeting held on 18th November 2014 vide approval certificate No. [particulars withheld] dated 20th January, 2015. When the Director Children Services declined to provide a report to the court, an application dated 8th July 2015 was brought before the court. Upon consideration and on the basis of the best interest of the child, this court ordered in a ruling dated 30th October 2015 that the report of the Director of Children Services could be dispensed with in the circumstances of this case.

8. The child was in court during the hearings and appeared to have bonded well with the Applicants. He was cheerful and related with the Applicants as if he already considered them to be his parents

9. From the foregoing I am satisfied that all the legal requirements for an international adoption have been met, and consequently I will make the following orders:

- a. That the Applicants, **J A V** and **F M D G**, are hereby allowed to adopt Baby **E N**, who shall be hereinafter known as **EBN**.
- b. His date of birth shall be presumed to be 21st December, 2013.
- c. He is presumed to have been born in Kenya and the place of birth shall be Maseno.
- d. The child is presumed to be Kenyan by birth.
- e. Mr. R C J and Mrs. S T M V D P l (friends to the Applicant) respectively are hereby appointed as the legal guardians of the child, should the Applicants die or become permanently incapacitated before the child attains the age of majority.
- f. The Registrar-General is directed to enter this adoption order in the Adoption Register;
- g. The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.

The guardian ad litem is hereby discharged.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF October 2015.

L. A. Achode

JUDGE

In the presence ofadvocate for the applicant.