



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTIONS CAUSE NO. 115 OF 2015
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY I J - MINOR
T T- H.....1ST APPLICANT
K T-H..... 2ND APPLICANT

J U D G M E N T

The applicants, T T –H and K T- H are citizens of Norway. They were married on 4th August 2007. The 1st and 2nd applicants are journalists by profession. The applicants have so far not been blessed with any children of their own. They wish to adopt a child. The applicants approached the relevant authorities in the Norway with a view to securing the requisite approvals to enable them adopt a child, specifically a foreign child. The applicants were investigated by Agency for Child and Family Welfare Services and a Social Enquiry Report dated 2nd September 2013 is attached as **Exhibit 6 a b & c** respectively. The Minister of Justice Department, Norway also assessed them and they were approved to adopt a foreign child. This is confirmed by the Consent to adopt and confirmation from accredited Adoption Agency **Exhibit 19 a & b**. The National Adoption Committee of Kenya duly approved the application by the applicants to adopt a child in Kenya. The approval certificate to that effect was issued on 19th August, 2014 produced as **Exhibit 20**.

Baby J alias I, the child, the subject of these adoption proceedings is presumed to have been born on 11th March 2013. She was found abandoned on 11th March 2013 at a stream near Witethie area, Thika town. The child was rescued by a Good Samaritan and the incident was reported to Thika Police Station and the report recorded as OB 52/11/3/2013. The child was admitted to Thika Level 5 Hospital and after confirmation he was healthy and normal, he was placed by the Thika Children Officer in Mogra Soul Winner Rescue Home. On 8th august 2013, Thika SPM Court committed the child to the same home vide Protection and Care Case number 235/2013. This court therefore dispenses with the consent of the biological parents to the proposed adoption by the applicants.

The child remained unclaimed for more than 6 months and the Police Department confirmed that they were not able to trace the child’s family. All relevant documents are attached to the application for verification. The Little Angels Network Adoption Society report filed on 1st October, 2015 confirms the details on the Child herein. The Adoption Society issued a certificate declaring the child free for adoption. The certificate is dated 30th July, 2014.

The court read the reports prepared by Little Angels Network, the local adoption society and M W M, the guardian ad litem. All the above reports are favorable and recommend the applicants' application to adopt the child. This is an international adoption. There are certain conditions that the applicants must fulfill before this court can allow them to adopt the child. The first condition is that the applicants must be approved by the relevant Adoption authorities in their country of origin. In the present case, the applicants have been assessed and approved by the relevant authorities in their country of origin, Norway. This court had the benefit of reading the translated social report prepared by Agency for Child and Welfare Services, Oslo, Norway. This court is satisfied that the Applicants have been approved by the Norwegian Directorate for Children, Youth and Family Affairs in Norway to adopt a foreign child, and specifically a Kenyan child.

The second condition is that the applicants must be approved by the National Adoption Committee in Kenya to adopt a child in Kenya. The applicants have been assessed by the said National Adoption Committee. A certificate has been issued by the said committee approving the applicants' application to adopt a child in Kenya dated 16th September, 2014. The third condition is that the applicants must satisfy the court that they have fulfilled the legal requirements regarding the adoption, including having custody of the child for a sufficient period to enable bonding to take place. This period must not be less than three (3) months. It was clear to the court that the applicants have fulfilled all the legal requirements in respect to international adoption. The applicants have had the custody of the child since 27th January, 2015. In the period that the child has been in their custody, the child has bonded with them. This was evident from the reports prepared by the guardian ad litem and the local adoption society. The applicants have established that they have the financial and emotional capability to take care of the child.

On 25th May, 2015, the Applicants and the child attended Court on appointment of Guardian ad litem. Therein, the Court granted orders among them a report is prepared and filed in court by the Director of Children Services. On 2nd October, 2015, by an application under certificate of urgency, the applicants through learned Counsel informed the Court, that despite service of the Court order, the Director of Children Services declined receipt of the Order. Counsel for the Applicants produced a letter from the Director of Children Services dated 14th May, 2015 to the effect that there is a moratorium of Inter Country Adoption of Kenyan children with effect from 27th November, 2014. Counsel for the Applicants informed this Court that although there is the moratorium, the instant case was handled and dealt with before the moratorium took effect.

The Directive is as follows;

“As you are aware, on 27th November 2014, the cabinet declared an indefinite Moratorium on Inter-Country Adoption of Kenyan Children to foreigners.

You will also recall that our ministry was tasked with developing a paper with detailed policy, institutional and legal framework to streamline child adoption process in this country, an exercise which is to be undertaken through the Committee of Experts which was recently gazette by the then Cabinet Secretary.

The purpose of this letter is to reiterate that the Moratorium is still in force and will continue to be so until such time that the afore-mentioned issues have been adequately addressed and we have been directed accordingly.

You are required to ensure full compliance with this Moratorium by ensuring that no inter-country adoption takes place and that the correct information in this regard is communicated to stakeholders at all times.

Please bring the contents of this letter to the attention of all staff in the Department of Children's Services.

Signed

Principal Secretary”

This Court perused the relevant documents and reports with regard to these adoption proceedings and found all requirements and conditions are complied with by the Applicants.

Whereas it is a matter of practice that the relevant Government Department in this case the Director of Children Services to participate and supervise the adoption process, the Director of Children services declined to file a report. It is unclear what the fate of the ongoing adoption cases is. Despite various formal and informal consultations amongst the stakeholders the matter is not resolved. In the meantime, this Court’s responsibility is to the child, the child has an opportunity to grow in a home and family setting. The best interests of the child is paramount in matters regarding the Child as espoused in **Article 53 (2) Constitution 2010 and Section 4 of the Children Act , 2001**. Therefore, the Court finds that although the moratorium is in place and in effect with regard to adoption cases post 27th November, 2014, but it cannot apply retrospectively. The cases handled before the advent of the moratorium shall be completed unless evidence to any irregularity or illegality is brought to the attention of this Court by any party. In the instant case, the defunct National Adoption Committee approved the Applicants to adopt in a meeting held on 19th August, 2014 and an order of 16th September, 2014 and the moratorium took effect on 27th November, 2014. The Director of Children Services Report is dispensed with in the instant case.

Having evaluated all the reports on record, and the applicants’ application seeking to be granted permission to adopt the child, it was clear to this court that it would be in the best interest of the child for the application for adoption to be allowed. The applicants have given an undertaking that they shall allow access to the approved adoption society in their country of origin to undertake post-adoption supervision for a period of three years from the time of the issuance of this adoption order. The applicants have executed an undertaking that if this court grants the adoption order, they will permanently assume all the parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if he was born to them in their marriage; they have been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that they shall adopt; that the child shall have the right to inherit their property; that an adoption order cannot be recanted, and further, that they shall not give up the child owing to any subsequent unforeseen behaviors or other changes in the child; that the Adoption society in Norway (foreign adoption society) Agency for Child and Welfare Services, Oslo, Norway shall provide annual follow up reports on the progress of the child to the Adoption society in Kenya (local adoption society) Little Angels Network ,for a period of three (3) years from the date of the arrival of the child in Norway; that the applicants undertake to allow the representatives of the foreign adoption society in Norway, free access to the child at any reasonable time. The applicants further give an undertaking that they shall accord their citizenship to the child.

In the premises therefore, this court finds that the applicants have met the criteria set for international adoptions. The applicants, T T- H and K T- H are hereby authorized to adopt Baby J alias I. The child shall henceforth be known as I T- H. His date of birth shall be 11th March, 2013. His place of birth shall be Thika - Kenya. He is therefore presumed to be a citizen of Kenya by birth. Mr. M v E V and Mrs J H V , relatives of the Applicants are hereby appointed to be the legal guardians of the child should misfortune befall the applicants.

The Registrar General is hereby directed to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

SIGNED AT NAIROBI THIS 27TH DAY OF OCTOBER, 2015

M. MUIGAI

JUDGE

In the presence of;

Mr. Ogoti for the Applicant.