



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 27 OF 2013
IN THE MATTER OF: CHILDREN’S ACT NO. 8 OF 2001
AND
IN THE MATTER OF: BABY A Alias R B
(MINOR CHILD)
IN THE MATTER OF: APPLICATION FOR ORDERS OF ADOPTION
BABY A Alias R B
(MINOR CHILD)
BY L P D D
AND K J M H
APPLICANTS
BETWEEN
L P D D 1ST APPLICANT
K J M H 2ND APPLICANT
AND
LITTLE ANGELS NETWORK RESPONDENTS

JUDGMENT

By way of an Originating Summons dated 19th November 2013, the two Applicants namely **L P D D** (hereinafter referred to as the 1st Applicant) and **K J M H** (hereinafter referred to as the 2nd Applicant) seek inter alia the following orders:

“b THAT L P D D and K J M H be authorized to adopt ‘BABY A alias R B’ the minor child

c **THAT the name of 'BABY A alias R B to change to R B D D**

d **THAT costs of this summons be costs in the cause"**

On 3rd December 2013 the court approved the appointment of **Ms JOYCE APASI MWACHARI** as the 'guardian ad litem' in the matter. The application was heard by way of Vive Voce evidence on 10th December 2013, on which date both Applicants appeared and testified on the matter. The Applicants are a Dutch couple who have travelled to Kenya with the desire and hope to adopt a Kenyan child. The subject child was abandoned at the Thika Level 5 Hospital shortly after birth. Given that the Applicants are foreign nationals both of whom hold Dutch passports, this qualifies under Kenyan law as an international adoption. As such in addition to the Children Act of Kenya the adoption will be guided by the '**Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption**'.

Section 156(1) of the Children Act of Kenya provides that:

"No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf".

The subject child having been born in January 2010 was approximately 3 ½ years old by 20th November 2013 when the present application was filed. He was therefore well over the six week age limit provided for by the law. The certificate No. [Particulars withheld] dated 20th March 2013 and issued by the **Little Angels Network** which is a registered adoption agency confirms that the child is free for adoption. Finally annexed to the summons is an Approval for this international adoption issued by the Director of Children Services in his capacity as the secretary to the National Adoption Committee which approval is dated 2nd May 2013. I am therefore satisfied that all the legal prerequisites for this adoption application have been met.

PROSPECTIVE ADOPTIVE PARENTS

As stated earlier the Applicants are a couple of Dutch citizenship. The couple met in the Netherlands in 1997 and became friends. Their relationship blossomed into a marriage which was solemnized on 19th December 2006. They both currently reside in BJ Arnhem, in the Netherlands where they live in their own home. The Applicants though having been married for seven (7) years have not born a biological child of their own. An annexed medical report dated 20th November 2012 reveals that despite having undergone several fertility treatments, every treatment failed and the doctors concluded that it would not be possible for the two to bear a child naturally. It is for this reason that the couple decided to turn to adoption as an option. Their commitment to this decision and process is evidenced by the fact that they have travelled several thousands of miles and at great expense have set up in Diani at the Kenyan Coast in order to achieve this goal. The couple have both submitted themselves to investigation and undergone counseling by '*Stichting Afrika*' which is a recognized adoption agency in the Netherlands. This shows that the Applicants are ready and willing to adhere to all legal procedures in their quest to adopt. I have carefully perused the Social Enquiry Report prepared by Child Welfare Council of the Ministry of Safety and Justice in the Netherlands. The report which is detailed and exhaustive reveals that both Applicants grew up in stable homes and both had a normal upbringing. They still retain close ties with their parents and siblings. None of the Applicants has a criminal record and both are in sound mental health. They have realistic expectations about the joys as well as the challenges of adopting a child of a different race from themselves. Both are in stable employment. The 1st Applicant works for an information technology company as a Project Manager whilst the 2nd Applicant runs her own communication-advice agency. Annexed bank statements indicate that the couple jointly earn about Kshs.13 million a year which is more than sufficient to provide for the needs of the child. Finally I did examine both Applicants in court. They both assured me that they were ready and willing to take the child and accord him all the rights and privileges of a biological child. Indeed they struck me as a loving couple with a genuine desire to offer this child a home. I am satisfied of the suitability of the Applicants as adoptive parents.

THE CHILD

The child who was born in January 2010 was found abandoned shortly after birth at the Annex ward of Thika Level 5 Hospital. He was admitted into hospital for primary care. The matter was reported to police. On 16th December 2011 the child was committed into the custody of the Children Karibuni Organisation in Thika. It is here that the Applicants met the child. To date no person has come forward to claim the child and a letter dated 30th April 2012 from Thika Police Station confirms that all efforts to trace the mother and/or relatives of the child have proved fruitless. I am satisfied that the child was free for adoption. In addition in view of his history of abandonment I find that there is no person from whom consent for the adoption need be sought. I therefore waive the requirement for a consent in line with Section 159(2) of the Children Act.

THE ADOPTION APPLICATION

In coming to a determination of this application I have perused and have carefully considered all reports placed before me including the Post-Placement Report by the adoption agency and the Home Report prepared by the Kwale Children's Office. The child was released into the custody of the Applicants under a Care Agreement from the childrens home on 13th August 2013. From that date they have lived with the child at Diani Villas in Kwale. Several visits were made by the adoption agency and the childrens department and it was found that there has been proper bonding between the Applicants and the child. The child was healthy and thriving in their care. This was evident to the court when the parties appeared before me. It was obvious that the child was very fond of the Applicants and considered them as his parents. He has even learnt a few words of the Dutch language. The court was assured that upon adoption the child would be entitled to acquire Dutch citizenship, thus would be accorded all rights due to citizens of that country. Section 4(a) of the Children Act obliges a court to give **priority** to the **best interest** of a child in deciding whether or not to allow an application for adoption. In this case the child had no family of his own and at best faced an uncertain future in a childrens home. The adoption will give the child the advantage of being raised by loving parents in a home environment. All his needs including medical, educational, social and emotional will be catered to. I am satisfied that this adoption serves the best interests of the child. I therefore allow the application and grant prayers (b) and (c) of the Summons dated 19th November 2013. No orders on costs.

Dated and Delivered in Mombasa this 17th day of February 2014.

M. ODERO

JUDGE

In the presence of:

Mrs. Kipsang for Applicants