



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 29 OF 2013
IN THE MATTER OF: CHILDREN'S ACT NO. 8 OF 2001

AND

**IN THE MATTER OF: T Z O ALSO KNOWN AS T O Z
AND ALSO KNOWN AS M O – A CHILD**

**IN THE MATTER OF: AN APPLICATION FOR ORDERS
OF ADOPTION OF THE MINOR T Z O ALSO KNOWN AS T
O Z AND ALSO KNOWN AS M O BY N P E AND L K H THE
JOINT APPLICANTS**

BETWEEN

N P E

L K H.....JOINT APPLICANTS

JUDGMENT

The applicants herein namely **N P E** (hereinafter referred to as the 1st Applicant) and **L K H** (hereinafter referred to as the 2nd Applicant) have jointly applied to adopt the child **T Z O** also known as **T O Z** also known as **M O** (hereinafter referred to as the child). The application was made by way of an originating summons filed in court on 3rd December, 2013. The applicants are a married couple who are both citizens of Sweden. Thus this is what is commonly referred to as a '*foreign adoption*'. Therefore in addition to the Children Act 2001 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**".

The application was heard by way of '*vive voce*' evidence on 26th February, 2014. Earlier on 18th December, 2013 the court had approved **Ms. J A** as the '*Guardian ad litem*' for this case. Section 156(1) of the Children Act of Kenya provides:

“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 whose date of birth was given as 13th July, 2012 was aged about 1 ½ years old by December, 2013 when this application was filed. He was therefore well over the six week old age limit

provided for by this section. Likewise I have seen the certificate dated 22nd May, 2013 serial No. [Particulars withheld] issued by the Little Angels Network which is a registered adoption agency declaring the child free for adoption. In addition I have seen annexed to the application the Approval Certificate for a Foreign Adoption Approval Certificate dated 23rd May, 2013 issued by the National Adoption Committee which grants to the two applicants (who are both foreigners) authority to adopt a Kenyan child. 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 married couple, both of Swedish Nationality. The two got married to each other on 23rd May, 2009 at the Brunnby Church in Skane, Sweden. They have annexed a copy of the notification of marriage as well as a photograph of the two singing at their wedding ceremony. They have been married for the past five (5) years but their desire to bear their own biological child remained unfulfilled. As was explained despite having subjected themselves to fertility and IVF treatments they were still unable to realize their dream of bearing a child together. After accepting this reality they decided to pursue the option of adoption. The fact that the couple are both committed to this decision and to the adoption process is evident from the fact that they have travelled thousands of miles to Kenya in order to adopt a child. In addition the couple have subjected themselves to interviews and social enquiries from agencies in both their home country and in Kenya. In addition they willingly have opened up their financial records for scrutiny and voluntarily have attended pre-adoption classes in their home town of Krungsbacka. During their oral evidence before me both applicants confirmed that they fully understood the legal obligations which an adoption order would confer upon them and both stated that they would accord the child all rights due to a biological child.

I have carefully perused the annexed Home study report prepared by the Krungsbacka Social Welfare Committee. I note that each applicant had a normal upbringing and were raised in a loving and close knit family environment. The report indicates that the two are both of sound mental and physical condition and neither was found to have any negative or adverse police report. Indeed I note that the 1st applicant has been a school teacher and has worked closely with young children thus I have no doubt that he has acquired special skills which make him suitable to adopt a child. The couple are both in paid employment and their financial records indicate that they earn a very comfortable living and have sufficient resources at their disposal to provide for the child. The couple live in their own home in the town of Krungsbacka and the annexed photographs show it to be a spacious well appointed home in which a child's room has already been furnished. They both maintain close ties to their families and the child will be absorbed into a welcoming extended family with aunties, uncles, grand-parents as well as cousins. The applicants both assured the court that they were ready to take up the challenge of parenthood and though they did not anticipate any incidences of racial bias, were both ready and willing to tackle the same if it arose. The applicants both have been found fit and have received consent of the Swedish Social Welfare Secretary to adopt a child. On my part I observed the two to be a normal happily married couple who had a genuine desire to adopt the child and to provide him with a home in their country of Sweden. I am satisfied that the applicants are fit to adopt the child.

THE CHILD

The child whose given names were 'T Z O' aka 'T O' aka 'M O' was born on 13th July, 2012. He was found abandoned at the Kabarnet District Hospital at just ten (10) days old. The nurses at the said hospital reported the matter to the police who launched a search for his birth mother but to no avail. The child was made a ward of court and was later committed by the Kabarnet Childrens Court to the '**Haven of Hope Bay Centre**' in Nakuru. It is here that the applicants met the child and in May, 2013 the child was officially handed over to them under a fostering agreement. They have lived with the child since then at [Particulars withheld] in Msambweni. A final report dated 25th July, 2012 from Kabarnet Police station indicates that all efforts to trace the biological parents of this child have been unsuccessful. No person has come forward to claim the child. The child was abandoned at the hospital a clear indication that his biological mother was unable and/or unwilling to care for him. As matters stand no parent and/or

relative of said child is traceable and as such there exists no known person from whom consent for this adoption can be sought and/or obtained. As such I do hereby waive the requirement for consent in line with section 159(2) of the Children Act.

THE ADOPTION APPLICATION

In determining this matter I have carefully perused the Home Report prepared by **Mr. Zephaniah Apoko**, the sub-county Childrens Officer Msambweni, the *Guardian ad litem's* report as well as the post-placement report prepared by the Adoption Agency. The reports all indicate that having been in the custody of the applicants since August, 2013 the child has been thriving under their care. He has been well taken care of and has bonded well with the applicants. This bonding was obvious to me when the parties appeared before me in chambers. I observed a healthy, happy 2 year old toddler who clearly viewed the applicants as his parents – the child could even utter a few words in Swedish. The law obliges the court to give priority to the best interests of the child in such cases. The child having been abandoned shortly after his birth faced an uncertain future in Childrens Homes. The applicants are offering him a chance to be raised in a stable home environment with loving parents. I am satisfied that the adoption would serve the best interests of this child. I therefore grant authority to the two applicants herein to adopt said child and I do allow the present application in terms of prayers (1), (2) and (3) of the same. No order on costs.

Dated and delivered in Mombasa this 26th day of March, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Njoroge Advocate