



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 31 OF 2013

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF THE ADOPTION OF BABY E M ALIAS D N (THE CHILD)

BY

MR. A M

MRS. T S M W.....APPLICANTS

AND

LITTLE ANGELS NETWORK.....RESPONDENT

JUDGMENT

The joint applicants herein namely **MR. A M** (hereinafter referred to as the 1st applicant) and **MRS. T S M W** (hereinafter referred to as the 2nd applicant) have filed in court an originating summons dated 10th December, 2013 seeking to be allowed to adopt **BABY E M alias D N** and that upon adoption they pray that the child be called **E D N W M** henceforth. The applicants also pray that the court waive any requirements for consent as the child was found abandoned. Finally the applicants pray for orders directing the Registrar-General to make the appropriate entries in the Adopted Childrens Register. The application was heard by way of Vive Voce Evidence. On 18th December, 2013 the court did approve the appointment of **MS. H M** as the *Guardian-ad-litem* in the matter. The applicants both testified before the court on 19th March, 2014.

The applicants are not Kenyan citizens. They are both citizens of the Netherlands who are seeking to adopt a Kenyan child. As such this is what is commonly referred to as a 'Foreign Adoption'. That being the case certain prerequisites must be met before this court can proceed to consider the merits of the application. This adoption must comply with the '*Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption*'. In this regard I note that annexed to the summons is a certificate of Approval for an Individual Foreign Adoption Application, which approval is dated 23rd May, 2013 and is issued by the Director of Children Services in his capacity as Secretary to the National Adoption Committee. Section 156(1) of the Children Act, 2001 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.”

In this case the subject child was born on 10th October, 2010. He was therefore about three (3) years old by December, 2013 when this summons was filed. I have seen and noted the certificate serial number [Particulars withheld] dated 17th July, 2013 declaring the child free for adoption which certificate was issued by the Little Angels Network which is a registered adoption society in this country. I therefore find that both the local and international prerequisites for adoption have been met and this application is properly before the court.

The Prospective Adoptive Parents

As stated earlier the applicants who seek to adopt the subject child are a Dutch couple who have been married to each other since 2006. They both reside in the town of Leeuwarden in the Northern part of the Netherlands where they have set up their matrimonial home. The couple have been unable to bear their own biological child due to medical issues and thus they turned to adoption as an option. The applicants are not strangers to the adoption process or to parenting. They both told the court that they have one child a son named ‘**J M A**’ whom they adopted from Kenya in the year 2009. That child who is now aged 6 years lives with them in the Netherlands. Clearly the applicants are committed to this process having travelled a long distance and living in Kenya for several months at no mean expense in order to adopt a second child.

In order to assess the suitability of the applicants as adoptive parents I have carefully perused all relevant annexures to this application. I have examined the Social Enquiry Report prepared by the Child Welfare Council of the Netherlands. The report reveals that the applicants both grew up in close-knit normal families in the town of Dokkum in the Netherlands. They have both retained close ties with their siblings and extended family members. The couple were open to the investigation and both expressed a desire to add a second child to their family. Neither has a criminal record. I note that the applicants are each in stable paid employment and their bank records show that they have more than sufficient means to provide for a second child. It is gratifying to note that their chosen careers, the 1st applicant as a Biology teacher in an elementary school and the 2nd applicant as a trained nurse/social worker in a home for disabled children, means that they have acquired special skills which will be of great benefit in the raising of two young boys. Their careers are conducive to the very challenging role of parenting.

My oral examination of the applicants revealed that they are mature couple who have realistic expectations about the nature of adoption. Both state that they live in an open community where all races are welcome, but they are ready to handle any instances of discrimination that may arise. They each confirmed that they fully understand the implications of an adoption order and that they are ready to provide the child with all the rights and privileges due to a biological child. They both understand that an adoption order is irreversible. Their family members have welcomed their decision and have provided support for their decision.

The crucial aspect in determining the suitability of the applicants will be to consider how they have treated the first child whom they adopted in 2009. Again I will rely on the social report which indicates that the social workers in the Netherlands found that the boy ‘*J*’ was doing very well. He was healthy and sturdy and was attending school. He had been welcomed into the family with open arms and was taken to be one of them. The annexed photographs show a happy and cheerful boy. Indeed I found nothing that would indicate anything adverse and/or prejudicial to the welfare of the child ‘*J*’. I did myself see this child before me and in my opinion he has been well taken care of. He relates well with his parents and already had affection for the younger child. I note the fact that the applicants have already taken legal steps to have their first child ‘*J*’ acquire full citizenship and status in Netherlands. Based on the foregoing I am fully satisfied that both the applicants are suitable adoptive parents.

The Child

The subject child known as ‘*Baby E M*’ was abandoned a few days after birth at Mwiki shopping centre

on 12th October 2010. A lady known as 'V S' picked the child and took him to Mwiki police station. The child was then handed to the Kasarani Childrens Officer who placed him at Mogra Rescue Centre for care. On 1st February, 2013 the child was committed to the said rescue centre by the Nairobi Children's Court. The applicants met the child there and expressed a desire to adopt him. On 24th August, 2013 by way of a Fostering agreement the child was placed into the custody of the applicants who have been living with him in their rental home in Diani-Ukunda since that date.

From the time of his abandonment in October, 2010 no person has come forward to claim the child. He has spent all of his young life in a Children's Home. By a letter from the OCS Mwiki police station dated 12th September, 2012 police confirm that the parents/relatives of the child have not been traced. From this history I am satisfied that this child was indeed free for adoption. I further find that there exists no identifiable individual from whom consent for the adoption can be sought. I therefore waive the requirement for consent in line with section 159(2) of the Children Act.

The Adoption Application

Section 4(a) of the Children Act obliges a court to give priority to the '*best interest*' of the child in determining an application of this nature. I have examined the reports prepared by the Adoption Agency, the *Guardian ad litem* as well as that prepared by the Kwale County Children's Services. None of these bodies has any reservation to the adoption of this child by the applicants. Infact they all recommend it. Visits have been made to the home where the applicants live with the child in Diani. The child was found to be thriving in their care. This was evident even to the court as I was able to see that the child was happy and was obviously well cared for. He has bonded with the applicants and now regards them as his parents. It was clear that he has an obvious affection for the older child 'J' whom he will not doubt regard as a brother. I note that upon adoption the child will be entitled to Dutch citizenship and will be accorded all the rights and privileges available to Dutch children. This child has no family of his own. He faced an uncertain future in a Children's Home. This adoption affords him the opportunity to be raised in a stable and loving home environment. This certainly is in his best interest. I therefore authorize the adoption of this child by the two applicants and I grant prayers (1), (3) and (4) of the chamber summons dated 10th December, 2013. No order on costs.

Dated and delivered in Mombasa this 16th day of April, 2014.

M. ODERO

JUDGE

In the presence of:

Ms. Ngugi for Applicants

Court Clerk Mutisya