



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 9 OF 2014
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY S
A E K.....1ST APPLICANT
D M Z.....2ND APPLICANT

J U D G M E N T

The applicants, A E K and D M Z, are Dutch citizens. They were married on 28th May 2004. The 1st applicant is a Software Designer while the 2nd applicant is a Teacher. The applicants have one child, a daughter born through IVF. The applicants wish to adopt a child. The applicants approached the relevant authorities in the Netherlands with a view to securing the requisite approvals to enable them adopt a child, specifically a foreign child. The applicants were investigated by the Child Welfare Council, Central and West Brabant Region on behalf of the Dutch Ministry of Justice. They were found to be suitable parents to adopt a child. Under Dutch Adoption Laws, it is the said local authority which has jurisdiction to approve the application by applicants to adopt a child. The said Ministry of Justice issued a certificate approving the said application for adoption dated 2nd October 2012 on behalf of the Central Authority on Inter-country Adoption. The applicants were further assessed by Stitching Africa of The Netherlands, a foreign Adoption Society approved by the National Adoption Committee of Kenya. They were duly approved as suitable parents to adopt a foreign child. The National Adoption Committee of Kenya duly approved the application by the applicants to adopt a child in Kenya. A certificate to that effect was issued on 24th July 2013.

Baby Seth, the child, the subject of these adoption proceedings was prematurely born on 13th April 2011 at Thika Level 5 District Hospital and was admitted at the hospital's new born unit. The child was abandoned by his mother on 26th April 2011 when she absconded from the hospital. A report of the abandonment was made to Thika Police Station on 13th May 2011. The child was discharged from the hospital and taken to Happy Life Children's Home for care and protection. The Children's Court, Thika committed the custody of the child to the said Children's Home pending adoption proceedings. The child was placed under the custody of the applicants on 4th October 2013 for compulsory foster care. Since then, the child has been under the custody of the applicants. According to the police, their effort to trace the biological parents of the child has been in vain. A report to that effect has been filed in court. This court therefore dispenses with the consent of the biological parents to the proposed adoption by the

applicants. Little Angels Network, an Adoption Society issued a certificate declaring the child free for adoption. The certificate is dated 31st July 2013.

The court read the reports prepared by Little Angels Network, the local adoption society, the Child Welfare Council, Central and West Brabant Region in the Netherlands, the Director of Children's Services and by M K K, the guardian ad litem. All the above reports are favourable 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, the Netherlands. This court had the benefit of reading the report prepared by the foreign adoption society. This court is satisfied that the applicants have been approved by the relevant authorities in the Netherlands 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.

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 4th October 2013. 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 Director of Children's Services, 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. The court saw the child in court. The said child is thriving under the care of the applicants.

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 behaviours or other changes in the child; that the adoption society in the Netherlands (foreign adoption society) shall provide annual follow up reports on the progress of the child to the Adoption Society in Kenya (local adoption society) for a period of three (3) years from the date of the arrival of the child in the Netherlands; that the applicants undertake to allow the representatives of the Foreign Adoption Society in the Netherlands 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, A E K and D M Z are hereby authorized to adopt baby Seth. The child shall henceforth be known as S K. His date of birth shall be 13th April 2011. His place of birth shall be Thika Level 5 District Hospital, Thika- Kenya. The child is therefore presumed to have been born in Kenya. R C M B and S T M, the 2nd applicant's brother-in-law and sister respectively 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.

DATED AT NAIROBI THIS 11TH DAY OF APRIL, 2014

L. KIMARU

JUDGE