



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 13 OF 2014
IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF ADOPTION OF BABY G AKA BABY N AKA BABY N S

AND

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY N S BY A
M H AND A C H**

JUDGMENT

Before court is the originating summons dated **12th** June, 2014 seeking *inter alia* the following orders

“(a)

- (b) **THAT** the child **BABY G AKA BABY N AKA BABY N S** be declared a Kenyan citizen.
- (c) **THAT A M H and A C H** be authorized to adopt **BABY G AKA BABY N AKA BABY N S** the minor child.
- (d) **THAT** the name of **BABY G AKA BABY N AKA BABY N S** to change to **N S H**.
- (e) **THAT** the Registrar General be directed to enter the name of the child in the adopted child register in the prescribed form.
- (f) **THAT** costs of this summons be costs in the cause.”

The court did on 9th July, 2014 approve the appointment of **MS. G W** as ‘Guardian ad Litem’ in the matter. The application was disposed of by way of *vive voce* evidence. All parties did appear before the court on 23rd July, 2014. Section 156 of the Children Act 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.”

In this case the subject child was born on 28th February, 2005. She was therefore aged nine (9) years in

the year 2014 when this application to adopt her was filed in court. I have seen annexed to the application the certificate serial number [Particulars Withheld] dated 12th March, 2008 declaring the child Free for Adoption. This certificate was issued by the Kenya Children's Home Adoption Society which is a registered adoption society as evidenced by the annexed certificate dated 19th September, 2012.

The applicants herein are both German citizens seeking to adopt a Kenyan child. As such this is what is termed as an International adoption whereby in addition to the requirements of section 156 of the Children Act, the provisions of section 162 of the same Act will also apply. Similarly the adoption will be governed by the "**Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption**". I have carefully perused this application as well as the annexures thereto. I have seen and noted the following documents

- i. A certificate dated 24th July, 2013 issued to the Kenya Children's Home authorizing the society to conduct International Adoptions.
- ii. An approval certificate for an Individual Foreign Adoption dated 18th September, 2013, issued by the National Adoption Committee in Kenya.
- iii. Confirmation (Authority) of legal ability to adopt a child dated 26th April, 2013, issued by the Central Adoption Agency of Bavaria in Germany.

I am therefore satisfied by virtue of the above that all the legal prerequisites for this international adoption have been met and that the application is properly before this court.

THE APPLICANTS

The applicants are a German couple who have been married to each other for the past 24 years. A copy of their marriage certificate indicates that the two got married on September 10th 1990 in [Particulars Withheld], Germany. Their marriage is registered as [Particulars Withheld] of 1990 in the register. The applicants both appeared before me and gave oral evidence. They told the court that their union is blessed with three (3) sons namely

- F H born in 1988
- G H born in 1990
- L H born in 1996

Their two elder sons are in university in Germany whilst their youngest son is undertaking a volunteer program in a nearby hospital. I have carefully perused the Social Enquiry Report prepared by '*Eltem fur Afrika e v*' which is a registered Adoption Agency in Germany. The report indicates that the applicants each had a normal middle-class upbringing in Germany. They each maintain close ties with their siblings and parents. They currently live in the town of Ronsberg in their own home. The 1st applicant works as an IT Engineer whilst the 2nd applicant who is a nurse by profession currently teaches Yoga from her home. Both have stable careers from which they earn a good living. This is proved by the annexed financial records which show that the couple have sufficient funds to enable them cater for the needs of a new child in their home. The applicants are not new to parenting. They have successfully raised three sons to adulthood. All their sons have left the home and the applicants probably feeling an '*empty nest*' syndrome have decided to open up their hearts and their home to another child. The 2nd applicant told the court that she has always wished to have a daughter. Their interest in Kenya arises from the fact that the 1st applicant has made several visits to this country and has on occasion worked in Kenya. I have seen a letter from their church dated 25th March, 2013 which confirms that they are both active Christians and contains a recommendation from their pastor. I have also noted that each applicant has a certificate of Good Conduct issued by the German Federal Office of Justice confirming that neither of them has any police records. They are therefore law-abiding citizens. The applicants both confirmed to me that they fully understand the legal implications of an adoption. They are ready and willing to confer on the child all rights and privileges due to a biological child upto and including the right of inheritance. They confirm that upon adoption the child will be entitled to acquire German citizenship. My own assessment

is that the applicants are a couple who are in a committed marriage and who have a genuine desire to open their home and their lives to a child in need. I find no impediment to their being adoptive parents. I note that they have spent several months in Kenya to pursue this goal. Their biological children have all given consents in writing to the adoption. I find both applicants are suitable adoptive parents.

THE CHILD

The child in question was born on 28th February, 2005. She was found abandoned on 27th October, 2005 at the age of about six (6) months in the [Particulars Withheld] area of Nairobi. A good Samaritan whose name was given as 'Agnes Kalekye' found the child in a kiosk and took her to the police station. Attempts were made by police to trace the biological mother of the child but nobody came forward to claim her. The child was then placed at the Thomas Barnardo Children Home where she has been ever since. An earlier attempt to adopt her in April, 2008 did not succeed. Since this child was found abandoned in Kenya then by virtue of Article 14(4) of the Constitution of Kenya I hereby declare her to be a citizen of Kenya. This child was abandoned about nine (9) years ago. All attempts to trace her biological parents or other relatives have failed. No person has come forward to claim her. There is no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 159 of the Children Act.

THE APPLICATION

In making its decision this court is obliged by section 4(a) of the Children Act to give priority to the 'best interest' of the child. Here is a young girl who was abandoned at a tender age. She has lived all her life in a Children's Home. This adoption will allow her an opportunity to be raised in a stable and loving Christian home with parents who love her and with older siblings for guidance. The child has been living with the applicants since March, 2014. They have enrolled her in an International school and I could clearly observe that bonding had taken place. The child and the applicants are obviously very fond of each other and she now views the applicants as her parents. I saw the child in my chambers. She is a normal healthy 9 year old girl with a delightful nature. She insisted on showing me her school report card from which I could see that her academic performance is above average. I have considered the reports of the *Guardian ad litem* as well as the Home Report prepared by the Children's Department. Both favour the adoption. On my part I have no doubt that this adoption will serve the 'best interest' of this child and I therefore authorize her adoption by the applicants. I allow this originating summons in terms of prayers (b), (c), (d) and (e). No order on costs.

Dated and delivered in Mombasa this 8th day of August, 2014.

M. ODERO

JUDGE

In the presence of:

Ms. Kipsang for Applicants

Court Clerk Mutisya