



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 18 OF 2014

IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF A D alias ABANDONED BABY MALE – A CHILD

AND

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF THE MINOR A D
alias ABANDONED BABY MALE BY W F V B AND J H S V B THE JOINT APPLICANTS**

BETWEEN

- **W F V B**
- **J H S V B.....JOINT APPLICANTS**

AND

LITTLE ANGELS NETWORKRESPONDENT

JUDGMENT

By way of an Originating Summons dated 5-8-2014 the two Applicants namely **W F V B** (hereinafter referred to as the 1st Applicant) and **J H S V B** (hereinafter referred to as the 2nd Applicant) seek inter alia the following orders

“1. Pursuant to Article 14(4) of the Constitution of Kenya 2010, and section 11 of the Children Act, 2001 this Honourable court be pleased to declare the child **A D** also known as **ABANDONED BABY** a Kenyan Citizen by birth

2. Pursuant to the provisions of **SECTION 159 OF THE CHILDREN’S ACT 2001**, this Honorable Court be pleased to dispense with the requirement of the consent to the Adoption as required by the Provisions of **SECTION 159 OF THE CHILDREN ACT, 2001**.

3. The applicant **W F V B** and **J H S V B** be authorized to adopt **A D** alias **ABANDONED BABY** a child.

4. Upon the making of the Adoption order the child be known as **A D V B**.

5. Upon the making of the adoption order. The Registrar General do make an entry recording the adoption and the date of birth of the child as 2nd May 2012 in the adopted Children Register as provided for by **SECTION 170 OF THE CHILDREN ACT, 2001**

6. The cost of this application be cost in the cause”

The application was disposed of by way of Vive Voce evidence. On 27-8-2014 the court approved the appointment of **MS F N M** as the ‘Guardian ad litem’ in the matter.

Section 156(1) of the Children Act, 2001 provides as follows:-

“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 was estimated to have been born on 2nd May 2012. He was over two (2) years old at the time this application was filed in court and was well above the six week age limit provided by the Act. Annexed to the Application, I have seen a Certificate serial No. 001339 dated 21-8-2013 declaring the subject child free for adoption. This certificate has been issued by **The Little Angels Network** which is a Registered Adoption Agency in Kenya.

The two applicants are both Dutch citizens who are seeking to adopt a Kenyan child. This is therefore what is termed a foreign adoption. As such the court will be guided by the provisions of the Children Act 2001 of Kenya as well as the **‘Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption’**. I have seen annexed to the Originating Summons an Approval Certificate serial No. [particulars withheld] dated 25-2-2014 for Foreign Adoption issued to the two applicants by the National Adoption Committee of Kenya. Section 16(c) of the Children’s Act provides that any applicant in a foreign adoption

“Must have been authorized and recommended as persons who are suitable (including being morally fit and financially capable) to adopt a foreign child by a competent government authority or court of competent jurisdiction in the country”.

In this regard I have seen the Permit dated 8-1-2013 issued by the Dutch Ministry of Security and Justice authorizing the applicant to adopt a second child of foreign nationality [the couple already have a child adopted from Kenya in the year 2012] I am therefore satisfied that all the legal prerequisites for this application have been met.

THE APPLICANT

The applicants are a Dutch couple who have been married to each other since 2007. Due to Medical complications, they do not have a biological child of their own. However, the couple do have a child whom they adopted from Kenya in 2012. (More on this later). The applicants both testified before me on 7-10-2014. I have carefully perused the Social Enquiry Report prepared by Child Protection Council of the Ministry of Security and Justice of The Netherlands. The report indicates that both applicants had a normal middle class upbringing. They both retain close ties with their immediate families. Their decision to adopt a second child has been warmly welcomed by the family as proved by the fact that some family members have travelled to Kenya to meet the child.

As mentioned earlier this is not the first time the couple have walked the path of adoption. They did in the year 2012 adopt a child from Kenya which adoption was authorized by the Family Division of the High Court sitting in Nairobi on 11-5-2012. I have anxiously perused the follow-up reports prepared in respect of this older child whose names are **‘E F L V B.’**

Following his adoption the applicants moved with him to their home in Laiden in the Netherlands. The report indicates that the child has thrived in the care of the applicants. He has progressed well and has

settled comfortably into his new environment. I have seen the annexed photographs of the family and note that the child is happy and healthy. The child now holds Dutch citizenship and currently attends nursery school. I had the opportunity to see him in court and was satisfied that he has been well cared for. I have no doubt that the applicants will equally provide this child with the excellent care that they have provided to the first child they have adopted.

Both applicants hold stable jobs in the Netherlands. The first applicant is an Engineer who works with the Government whilst the 2nd Applicant is a primary school teacher – a job that no doubt equips her with the special skills required to care for young children. A letter from their bank ABN AMRO Bank dated 19/4/2013 confirms that they have sufficient resources to cater for both children. The applicants live in their own home and photographs show it to be a spacious well designed home suitable for growing children. Both applicants have confirmed to me that they fully understand the legal consequences of an adoption order. They have both testified that they are willing to treat the child as if he were their own biological child. A letter from Stitching Africa an International Adoption Agency in the Netherlands dated 20-11-2012 confirms that an adoption order made by a Kenyan Court will be given full effect and recognition in The Netherlands. The said Agency has confirmed that it will monitor the progress of the child in the Netherlands and will avail continuous progressive reports to their counter agency in Kenya being the Little Angels Network. The applicants confirm that upon adoption the child will be entitled to all the benefits due to all Dutch children including education and medical care at State expense.

From my own observation, the applicants were a mature couple in a committed marriage who have a genuine desire to expand their family by adopting this child. I am satisfied that they are suitable adoptive parents.

THE CHILD

The child whose given names are '**AD**' was abandoned at birth in [particulars withheld] Location. He was rescued and admitted to the Vihiga District Hospital for care and observation. On 7-09-2012 the child was officially committed to PEFA Rehema Children's Home by the Children's Court at Kakamega. From the time of his abandonment to date no person has come forward to claim the child. By a letter dated 1-7-2013 the Officer Commanding Vihiga Police Station confirms that all efforts to trace the biological parents of the child have failed. Thus it is clear that this child is indeed free for adoption. Article 14(3) of the Constitution of Kenya 2010 provides

"A child found in Kenya who is or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth"

On this basis I hereby declare the child AD to be a citizen of Kenya by birth. In view of the fact that there casts no known person from whom consent for this adoption can be sought and/or obtained, I waive the requirement for consent in line with Section 159(1) children's Act 2001.

THE 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. This is a child who was abandoned at birth. Clearly his biological mother was unable and/or unwilling to care for him. The child was fortunately rescued but faced an uncertain future in children's home and institutions. Through this adoption he is being offered a chance to grow up in a normal home environment with loving parents, a brother and an extended family. The child has been living with the applicants [particulars withheld] in Ukunda from May 2014. He has had ample time to form bonds with the family. I have carefully perused the Home Report dated 17-9-2014 filed by the Msambweni Children's Department as well as the Report of the Guardian ad litem. Both reports indicate that the child has adapted well to his new family. He and the older child regard each other as brothers. This bonding was quite evident to the court when they appeared before me. The child even speak a few words of Dutch. He now regards the applicants as his parents. I am persuaded that this adoption will indeed serve the best interests of this child and I do hereby authorize the same. I do allow this Originating Summons dated 5-8-2014 in terms of prayers (1), (2), (3), (4) and (5). No order on costs.

Dated and delivered in Mombasa this 17th day of October, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Njoroge for Applicant

M. ODERO

JUDGE

17/10/2014