



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 16 OF 2014

IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF M O also known as ONE YEAR OLD UNKNOWN BOY – A CHILD

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF THE MINOR M O also known as ONE YEAR OLD UNKNOWN BOY BY T R K AND A E K THE JOINT APPLICANTS

BETWEEN

T R K

A E KJOINT APPLICANTS

AND

LITTLE ANGELS NETWORKRESPONDENT

JUDGMENT

By way of an Originating summons dated 24-7-2014 the Joint Applicants namely **T R K** (hereinafter referred to as the 1st Applicant) and **A E K** (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 **M O** also known as **ONE YEAR OLD UNKNOWN BOY – A CHILD** as 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 **T R K** and **A E K** be authorized to adopt **M O** a child.

4. Upon the making of the Adoption order the child be known as **M T O K**.

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 12th May 2012 in the adopted Children Register as provided for by **SECTION 170 OF THE CHILDREN ACT, 2001**

The application was disposed of by way of Vive Voce evidence. On 27-8-2014 the court did approve the appointment of **MS J A M** as the guardian ad litem in this case.

The law with respect to adoption in Kenya is to be found in **The Children Act, 2001**. Section 156(1) of the said Act 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”

I have seen annexed to the Originating Summons a Certificate serial No. [particulars withheld] dated 26-2-2014 declaring the subject child free for adoption. This certificate has been issued by **The Little Angels Network** which is a registered adoption agency. The subject child is estimated to have been born on 12th May 2012. He was therefore just over two(2) years old in July 2014 when this application was filed. I find therefore that the prerequisites for this adoption contained in section 156(1) have been met.

The two applicants herein are both citizens of Sweden who are seeking to adopt a Kenyan child. This is therefore what is termed a foreign adoption. In such a case certain other legal conditions must be met. Such foreign adoptions are guided by the provisions of the children’s Act 2001 of Kenya as well as the **‘Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption**- section 162(c) of the Children Act of Kenya provides that any foreign applicant seeking to adopt a Kenyan child must “have been authorised and recommended as persons who are suitable (including being morally fit and financially capable) to adopt a foreign children by a competent government authority or court of competent jurisdiction in the country immediately after the making of the adoption order”

In this regard I have seen the **Certificate of Consent** to adopt a child domiciled abroad issued to the two applicants by ‘Socialstyrelsen’ the social Welfare Communitte in Sweden. Similarly I have seen the undertaking given by the **Swedish Friends Of Children International Adoption Society** dated 13-5-2013 confirming their commitment to receive and follow up on both the applicants and the adopted child for a period of three(3) years subsequent to their return to Sweden after the adoption process in Kenya. In addition, I note that the applicants were issued with an Approval Certificate for Individual Foreign Adoption Application issued on 25-2-2014 by the National Adoption Committee. The Certificate bears serial No. 000486. There is also confirmation from the ‘Swedish Friends of Children International Adoption Society’ that an adoption order issued in Kenya will be given full effect in Sweden and that once the adoption order is made the child will be entitled to receive Swedish citizenship and to travel immediately to Sweden. This application having met all the legal requirements for a foreign adoption is properly before this court.

THE APPLICANT

The applicants both testified before me on 7-10-2014. As stated earlier they are a Swedish couple who have been married to each other for the past fourteen (14) years. This marriage certificate confirms that they wedded in accordance with the rites of the church of Sweden on 25th August 2001. Due to a problem of unexplained infertility the couple have been unable to bear a child of their own. However, they do have a son **H T F K**, who was also adopted from Kenya in 2012. (More on this later). The couple live in the town of Nyhamslage in Sweden in their own home. The 1st applicant runs his own Consultancy Business whilst the 2nd applicant runs a hair saloon. They both indicated to the court their desire to adopt a second child in order to add to their family.

I have carefully perused the Social Enquiry Report prepared by the Hogganas Municipality Social Services Department. It indicates that both applicants had a normal middle class upbringing in Sweden. Both were raised in close-knit families and both still retain close ties with their parents and siblings. The financial records they have annexed reveal that the couple makes a comfortable living and I have no doubt that they have sufficient resources to provide for their two children. In any event upon adoption the child, like all other Swedish children will be entitled to education and medical care at State cost. I have seen pictures of their home which is a lovely spacious detached bungalow. The house is ideal for raising young children. They have received a positive recommendation from their pastor and are actively involved in church activities. Both have stable jobs.

As stated earlier the applicants are not strangers to the adoption process having adopted a Kenyan child in 2012. This child was with them in court. I could see that he was a healthy happy child who had obviously been receiving excellent parental care. The child was also very affectionate and favoured me with a hug before exiting my chambers. I have anxiously perused the follow up reports in respect of this elder child. He has adapted well to life in Sweden. He has been fully accepted and integrated into the family of the applicants. The child now attends school near the family home. Family photographs show that the child has been exposed to a wide array of holidays and family experiences. I found nothing to raise concern in the manner in which the applicants have cared and provided for their elder son and I have no doubt that they will provide such care to this child.

Both applicants confirm to me that they fully understood the legal implications of an adoption order. They stated that they would treat the child as if he were their own biological child. Given what I have observed with respect to the elder child, I have no doubt that this will be the case. All in all the applicants struck me as a mature, loving couple in a committed marital union who have a genuine desire to adopt this child and provide him with a loving home. Their commitment to the process is demonstrated by the fact that they both voluntarily attended pre-adoption classes in their country and by the fact that they have travelled thousands of miles to Kenya at no mean expense in order to achieve their desire, I am satisfied that the two applicants are suitable adoptive parents.

THE CHILD

The subject child who was referred to as '**ONE YEAR OLD UNKNOWN BOY**' is a child who was abandoned at [particulars withheld] in Vihiga County in Western Kenya. A lady who appeared to have been mentally challenged abandoned the boy in the hands of one '**DO**'. When the mother failed to return to collect the child, the said O reported the matter to Mudete Police Station. The child was thereafter referred to Springs of Life Children Home in Bukura and was on 16-5-2013 committed to that home for care and protection by the Vihiga Children Court. It is at this home that the applicants met the child. From the time of abandonment in May 2013 date, no person has come forward to claim the child. A letter dated 4/12/2013 from the officer commanding Mudete Police Station indicates that all efforts to trace the biological mother of the child have failed. Article 14(4) of the Constitution of Kenya provides that

“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”

This child having been found abandoned in Kenya at the age of 1 year is hereby declared to be a citizen of Kenya by birth. In view of the facts of abandonment and in view of the fact that one year later the biological parents of this child cannot be traced, I am satisfied that the child is indeed free for adoption. There exists no known person or relative of the child from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 159(1)(a) of the Children 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 such an application. This is a child who was abandoned at a very young age. He faced an uncertain future in a children's home or some similar institution. The applicants are offering the child the

chance to grow up in a home environment, with loving parents, a sibling and extended family. This certainly does serve the best interest of this child. I have perused the Home Reports filed by the Children's Department on 9-10-2014 as well as the Report filed by the guardian ad litem on 22-9-2014. Both reports indicate that the child has bonded with his new family and has thrived in the applicants case since April 2014 when they took him to live with them in Diani. The applicants are reported to be hands on parents and are involved in all facets of their children's care. My own observation from seeing the family in my chambers is that the family have all bonded well with each other. The children appear genuinely fond of one another and no doubt already relate to each other as brothers. The subject child was in my view healthy, happy and well cared for. He views the applicants as his parents. I am satisfied that this application does indeed serve the best interests of the child and I do authorise this adoption. Finally I do allow this Originating Summons 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

Mutisya Court Clerk