



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 29 OF 2014

IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001

AND

IN THE MATTER OF ADOPTION OF BABY I B

AND

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY I B BY P H M B
AND H N B THE APPLICANTS**

JUDGMENT

By way of an originating summons dated 6th November, 2014 the two applicants **P H M B** (hereinafter referred to as the 1st Applicant) and **H N B** (hereinafter referred to as the 2nd Applicant) made the following prayers:

- “1. THAT the applicants **P H M B** and **H N B** be allowed to adopt Baby I B a male child and the said child be known as V B.**
- 2. THAT **K J N** and **M N** of [particulars withheld], SWEDEN be appointed guardians to the said child in the event the adopters die or become incapacitated before she attains full age.**
- 3. THAT consent of the biological parents of the child be dispensed with.**
- 4. THAT the said child be presumed to be a Kenyan citizen born at Kiambu District Hospital.**
- 5. THAT the Principal Immigration officer be directed to issue the passport to the child when required.**
- 6. THAT the Registrar-General makes the appropriate entries into the Adopted Children’s Register.”**

The application was disposed by way of *vive voce* evidence. On 12th November, 2014 the court approved the appointment of **Ms. G W** as ‘*Guardian ad litem*’ in this 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.”

In this case the subject child was born in February, 2012. He was therefore aged about 2 ½ years old when this application to adopt him was filed. I have seen annexed to the summons a certificate serial No. [particulars withheld] dated 8th March, 2013 declaring the child Free for Adoption. This certificate is issued by KKPI Adoption Society which is a registered adoption society. The applicants herein are both Swedish citizens. This then is an International Adoption and will be guided by *The Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption* as well as the Children Act of Kenya 2001 of Kenya. Section 162 of the Children Act provides that foreign applicants in an adoption proceeding 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.*” In this regard I have seen the certificate granting the applicants consent to adopt a foreign child dated 27th November, 2013 issued by the Municipal Social Welfare Committee of Umea Kommun in Sweden, the locality in which the applicants live. The National Adoption Committee of Kenya has also issued an Approval Certificate dated 17th June, 2014 to the two applicants for the adoption of a Kenyan child. I am satisfied therefore that all the legal prerequisites for this adoption have been complied with.

THE APPLICANTS

The applicants are a married couple who solemnized their union in a civil ceremony conducted on 17th July, 2010 in Sweden. Despite having been in a relationship for several years the couple have not been able to bear a biological child together. They turned to the option of adoption in order to complete their family. I have carefully perused the Home Study Report prepared by the Family Welfare Officer of the Umea Social Welfare Committee in Sweden. The report indicates that both applicants were raised in close-knit nuclear family setting and both had a normal Swedish upbringing. The two retain close ties to their parents and siblings. Their financial status is also comfortable and they have sufficient funds to provide the child with all his needs. The 1st applicant works as a Human Resource Consultant whilst the 2nd applicant works as a Manager at the [particulars withheld]. The couple live in their own home in the town of [particulars withheld] about 16 km close to Umea. The home is close to the country side in a same location with a lake nearby. The home is undoubtedly a suitable home in which to raise a young child.

Both applicants have been examined by a doctor and were found to be mentally and physically fit and able to take up the responsibility of rearing a child. Neither has a criminal record.

The applicants both testified before me on 9th December, 2014. They each confirmed that they fully understood the legal consequences and obligations that would arise from an adoption order. They confirmed that upon adoption the child will be entitled to acquire Swedish citizenship. He will then like all other Sweden children be entitled to receive education and medical care at the states expense. Their family members have given support for their decision to adopt. The applicants state that they live in a tolerant multicultural society where the child would fit in. Indeed the 2nd applicant informed the court that her own sister has an adopted child from India. Therefore the family has no bias against cross-cultural adoptions. The applicants have both attended counseling to prepare for the adoption process and the Children Above – All Adoption Society in Sweden has confirmed that they will monitor the progress of the child in Sweden and will submit periodic reports to Kenya. I am satisfied that the applicants are a mature couple in a committed marriage who both have a genuine desire to provide this child with a safe home. I find that they are both suitable adoptive parents.

THE CHILD

The subject child was born at the Kiambu District Hospital on 4th February, 2012. His biological mother whose names were given as ‘R N’ abandoned the child in the hospital after birth. The matter was reported

to the Kiambu police station and upon an order from the Children's Court in Nairobi the child was committed to the Happy Life Children's Home for care and protection. Article 14 (4) of the Constitution of Kenya provides:

“Any child 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.”

I therefore declare the child '*Baby I* to be a citizen of Kenya by birth.

From the time his abandonment no person has come forward to claim this child. By a letter dated 13th January, 2013 the officer commanding Kiambu police station confirms that all efforts to trace the mother and/or relatives of this child have been fruitless. As such this child was indeed free for adoption. Given that there is no known person from whom consent for this adoption can be sought and/or obtained I hereby waive any requirement for consent in line with section 159 Children Act, 2001.

THE APPLICATION

Section 4(a) of the Children Act obliges a court to give priority to the **best interests** of the child. I have carefully perused the Home Report dated 24th November, 2014 prepared by the Msambweni Childrens Department as well as the report filed by the *Guardian ad litem* on 24th November, 2014. Both reports indicate that the applicants took custody of the child in August, 2014. They have been living with him at the [particulars withheld]. The reports indicate that the child has bonded well with the applicants and had adapted to his new surroundings. He has grown and flourished under their care. I saw the child in my chambers. He is a healthy boisterous and noisy 3 year old. He referred to the applicants as '*baba*' and '*mama*'. I am satisfied that the child has been receiving good care. This is a child who was abandoned at birth by a mother who was unable and/or unwilling to care for him. This adoption will accord the child the opportunity to be raised in a stable home environment with loving parents and extended family.. This in my view certainly serves the best interests of the child. I therefore authorize this adoption. I do hereby grant prayers (1), (2), (3), (4), (5) and (6) of the Originating Summons dated 6th November, 2014.

Dated and Delivered in Mombasa this 18th day of December, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Onyango holding brief for Applicants

Court Clerk Mutisya