

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 14 OF 2013

IN THE MATTER OF: CHILDREN'S ACT NO. 8 OF 2001

AND

IN THE MATTER OF: AN APPLICATION FOR ORDERS OF ADOPTION OF BABY G T O
ALIAS UNKNOWN MA LE CHILD

BETWEEN

M B

M L..... APPLICANTS

JUDGMENT

By way of an originating summons dated 21st August, 2013 the applicants herein namely **MR. M B** (hereinafter referred to as the 1st applicant) and **MRS. M L-B** (hereinafter referred to as the 2nd applicant) seek to adopt the child **G T O** (hereinafter referred to as the child) and that upon such adoption the child be known as **G R B**. The summons was supported by a statement as well as an affidavit in support both dated 21st August, 2013. The court did on 3rd September, 2013 approve the appointment of 'MS. H A' as the *Guardian ad litem* in this matter. The applicants are both citizens of the Netherlands whilst the child was born in Kenya. This therefore qualifies as an international adoption and as such will be guided by the Kenyan law being the **CHILDREN ACT NO. 14 OF 2001** as well as international law being '*The Hague Convention on the protection of children and cooperation in respect of inter country adoption*' (Hague Adoption Convention). Section 156(1) of the Children Act sets out the prerequisites for adoption in Kenya 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 child was born on 1st October, 2011 and was therefore aged about 1 ½ years at the time this application to adopt him was filed. Annexed also to the summons is a certificate serial number 001212 dated 13th March, 2013 issued by Little Angles Network which is a gazetted adoption agency declaring the child free for adoption. I am satisfied therefore that all the legal prerequisites for adoption have been met as required by section 156(1) Children Act.

In considering whether or not to grant the adoption order the court must look into the suitability of the applicants as adoptive parents. The applicants are a couple who got married on 26th November, 2004. This is evidenced by the annexed copy of their marriage certificate dated 10th October, 2012. From the time of their marriage to date they have not been blessed with their own biological child. Indeed medical reports indicate that the couple did attempt scientific methods like fertilization treatment and in vitro fertilization but to no avail. They finally came to the decision to adopt a child in order to complete their family. This was a decision that the couple took together and their commitment to this decision is proved by the fact that they have pursued all the legal formalities both in Netherlands and in Kenya and have

travelled thousands of miles taking time off work in order to seek a child to adopt. Further evidence of the applicants' commitment to this process is shown by the fact that they consulted and registered with 'Stichting Afrika' a registered Adoption Agency in the Netherlands and they have availed themselves for counseling and are ready to allow the said agency to conduct post-adoption monitoring of the child. Both the 1st and 2nd applicant earn an income. The 1st applicant runs his own business whilst the second applicant is in paid employment. They have sufficient financial means to provide for a child. They live in their own home with adequate space and facilities for a growing child. Each applicant has assured the court that he/she fully understands the legal consequences of an adoption order and each is ready to accord the child all the rights due to a biological child. The applicants are both physically and mentally fit and are both able to engage actively in raising the child. Both applicants enjoy close ties with their siblings and they both indicated to the court that their respective families fully support their decision to adopt a Kenyan child. This is evidenced by the fact that several family members have made visits to Kenya to meet the child and to provide moral support to the couple. Based on the material placed before me I have no doubt at all that the two applicants are suitable adoptive parents for this child.

As stated earlier this being an international adoption, the provisions of section 162 of the Children Act are applicable. The applicants assure the court that upon adoption the child will be entitled to take up Dutch citizenship. The letter from 'Stichting Afrika' (the registered adoption agency in the Netherlands) dated 1st November, 2011 confirms that an adoption order made in Kenya will be respected and recognized in the Netherlands, thus fulfilling the requirements of section 162(b). I have also seen the Approval Certificate for a Foreign Adoption dated 20th February, 2013 issued by the National Adoption Committee of Kenya which fulfils the requirement in section 162(c) of the Children Act.

Section 162(a) of the Children Act makes it a requirement that any necessary consents be obtained before an adoption order can be made. This child in this case was voluntarily given up for adoption by his birth parents. The reason was that the birth mother (who was only 15 years when she bore the child) had been defiled by her uncle leading to conception of the child. In the Luyhia community a child of incest is a taboo child and cannot be raised within the family. An issue arose that the birth mother was only 15 years old and therefore a minor at the time she gave her first written consent to the adoption. The Children Officer Kwale **MR. GITAU** pursued this matter and managed to trace the birth mother (who is now of age) in Nairobi. His supplementary report filed on 7th October, 2013 indicates that the birth mother reiterated that she did not want the child back and that her wish was that he be adopted. The said birth mother signed a fresh consent on 4th October, 2013 before an Advocate of the High Court of Kenya. As such I am satisfied that the relevant consent has been obtained for this adoption in compliance with section 162(a) of the Children Act.

Once all the legal requirements for an adoption have been met this court is obliged by the provisions of section 4(2) of the Children Act to consider whether the adoption order prayed for will serve the 'best interest' of the child. The relevant reports indicate that this was a child born out of an incestuous relationship. Due to the cultural norms the child was unwanted by both parents as well as the community and was therefore put up for adoption. Even several years later the birth mother was adamant that she did not want the child back. The child therefore faced an uncertain future in foster and/or children's homes being raised in an institutional set up. The adoptive parents offer the child a chance to grow up like most children in a stable home environment with loving parents and a family. I have considered the report filed by the *Guardian ad litem* as well as the report filed by the Children's Officer. Both indicate that there has been meaningful bonding between the child and the applicants. It was evident to me upon observing the parties in my chambers that the child is fond of the applicants and already views them as his parents. The nurturing care which the applicants are able to provide can only be in the child's best interests. Accordingly, I authorize this adoption and I hereby grant prayers (5) and (6) of the originating summons dated 21st August, 2013.

Dated and delivered in Mombasa this 20th day of December, 2013.

M. ODERO

JUDGE