



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
ADOPTION CAUSE 160 OF 2011

IN THE MATTER OF THE CHILDREN ACT (Act. No.8 of 2001)

AND

IN THE MATTER OF BABY S O

COURT AUTHORITY FOR ADOPTION (S.154 OF THE CHILDREN ACT)

JUDGEMENT

C.O.O., aged 39 (the Male Applicant) and **M.D.M.D.M** aged 39 years (the Female Applicant) are Kenyan and Spanish citizens respectively. They are man and wife. They ceremonised their marriage in 2004 by special license before the Registrar of Marriages in Nairobi.

The Applicants made an application to this court on 07.09.2011 by way of Originating Summons dated 6.9.2011 under Section 154(1) of the Children Act, Cap 141, seeking authority of this court to adopt a child known as **B S O (the child)** aged 9 years. The child was freed for adoption on 2nd August 2011 as is evidenced by Certificate No.0107 filed by the Child Welfare Society of Kenya, a registered Adoption Society in Kenya.

The child's biological mother died in 2006 and the biological father died in 2008. The child's biological father was a step-brother of the Male Applicant. The death certificates of the child's biological parents have been exhibited as well as the 'the child's birth certificate. I have perused them. Besides the child (S O) the child's deceased parents had also two other children, **C O**, and **A O O**. The child in this application aged 9 years and is said to be in good health and to have bonded well with the Applicants.

The Applicants were motivated to adopt the child and his siblings to alleviate their suffering and more importantly due to miscarriage suffered by the Female Applicant following which she was unable to conceive.

The Male Applicant and the Female Applicant profess the Christian faith. The Male Applicant is a student at the (*particulars withheld*) while the Female Applicant is a (*particulars withheld*). The Applicants are realistic about their marriage. The Male Applicant is HIV positive and has no income. In the event of separation or divorce, it is agreed that the Female Applicant, shall have custody with visitation rights to the Male Applicant. This is pragmatic and their attitude is commendable not least because their source of income is from the Female Applicant who earns Euros 1,900. They own a small house in Spain that generates rental income of 360 Euros per month. They intend to reside in Kenya permanently and currently live in a 3 bed roomed house at Rusinga with the child and the latter's two siblings.

Neither Applicant has a criminal record. They are said to be in good health. In the event that they are incapacitated or die or are otherwise unable to care and raise the child, they have appointed **M D** and **M D C M M** to step in their shoes and take up the responsibility of caring and raising the child.

The Applicants and the child have been assessed and evaluated by **The Child Welfare Society of Kenya**, a registered Adoption Society in Kenya and by the **Director of Children Services** and the **Guardian ad Litem Sister E N M**. I have perused the assessment and evaluation reports. They are favourable. The Applicants had care and control of the child for more than 3 consecutive months and were evaluated before making the application and have complied with the provisions of the Children Act including S.157 of the Children Act.

As the Male Applicant is a Kenyan citizen, and as both Applicants intend to reside in Kenya, this Adoption Application is not an International Adoption under S.162 of the Children Act. The applicants have not indicated whether the female Applicant intends to seek Kenya citizenship. The children are Kenyans and if their mother were to take them to Spain, it would not be contrary to law. As this is a local adoption and as the provisions of the Children Act have been complied with, the authority to adopt should not be denied. The applicants qualify to adopt. They are also proper persons to adopt the child. I am satisfied that this kinship adoption is in the best interest of the child and his siblings.

Accordingly, I grant the Applicants the authority sought to adopt the child and I make the following orders:

1. The Applicants, **C O O** and **M D M D M** are hereby authorized to adopt **S O**.
2. The said child shall henceforth be known as **S O O D**.
3. The date of birth of the child, **S O O D** is **27th May 2002**.
4. The Legal Guardian of the child shall be **M D and M D C M M of [.....]**
5. The Registrar General is hereby directed to enter this adoption in the Register of Adoptions.
6. For the avoidance of doubt, the rights and duties of the natural parents of the child are hereby extinguished and all the parental rights, duties, obligations and liabilities of the child, **S O O D**, now vest in and shall be exercisable by and enforceable against the Applicants as the adopting parents as if the child were born in wedlock to the adopting parents and the child, to all intents and purposes, now stands to the adopting parents as a child born in wedlock and both the adopting parents shall henceforth be the lawful father and mother of the child.

Dated at Milimani Law Courts, Nairobi, this 7th day of June 2012.

G.B.M. KARIUKI, SC

JUDGE

COUNSEL APPEARING

Mrs. Mbanya Advocate of R. W. Mbanya & Company advocates for the Applicants

Mr. Kugwa – Court Clerk