



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ADOPTION CAUSE NO.141 OF 2010
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY D.H (MINOR)

G. J.J.L.....1ST
APPLICANT

K.DE.B.....2ND
APPLICANT

J U D G M E N T

The applicants, G. J.J.L and K De B, are Dutch citizens. They were married in The Netherlands on 25th March 2006. The applicants have been unable to have biological children of their own due to biological reasons. The 1st applicant is employed by a company in The Netherlands as a truck driver while the 2nd applicant works as a teacher. The applicants desire to adopt a child, specifically a child from Kenya. In order to adopt a child from Kenya, The Netherlands' Ministry of Justice which deals with inter-country adoptions, instructed the Council for Children Welfare at Rotterdam to investigate the applicants with a view to establishing their suitability to adopt a foreign child. The report prepared by the said Council is favourable and recommended to the Ministry of Justice to grant permission to the applicants to adopt a foreign child. The recommendation was made on 21st January 2009. On 10th June 2010, the Ministry of Justice of The Netherlands granted permission to the applicants to adopt a foreign child. The applicants were further assessed by Stichting Africa-Netherlands, a foreign adoption society based in Netherlands which has been approved by the Kenyan National Adoption Committee to conduct pre- and post-adoption supervision of children adopted from Kenya. The said foreign adoption society recommends the proposed adoption by the applicants. The National Adoption Committee of Kenya sitting on 22nd October 2009, favourably considered the applicants' application to adopt a child from Kenya. A certificate granting permission to the applicants to adopt such a child was issued by the said committee on 12th November 2009.

Baby D.H, the child that is the subject of these adoption proceedings, was born on 19th April 2006. His parents, S.A and E.G are related. Soon after the birth of the child, the child was offered to the Vihiga District Children's Officer for adoption due to the fact that the child was considered as a taboo child and therefore an outcast in the community where the parents of the child are ordinarily resident. Both parents of the child signed consents surrendering their parental rights and responsibility of the child. They

signified this consent, initially, when the child was surrendered to the Children's Office and later, when they issued their final consent surrendering the said child for adoption. The paternal and maternal grandmothers of the child also gave their consent to the proposed adoption. This court is satisfied that the parents of the child gave their consent to the proposed adoption. The child was placed under the care of New Life Home Trust-Kisumu on 6th June 2006 by the Children's Office, Vihiga. The Vihiga Children's Court committed the child to the custody of the said Children's Home on 7th September 2006. Little Angels Network, the duly approved local adoption society declared the child free for adoption. A certificate to that effect was issued on 30th June 2010. The child was placed under the custody of the applicants on 9th July 2010 for compulsory foster care pending these adoption proceedings.

The court read the reports prepared by Little Angels Network, the local adoption society, the Council for Children Welfare at Rotterdam in the Netherlands, the Director of Children's Services and by C.W.K, the guardian ad litem. The court had the benefit of reading the reports prepared in The Netherlands in regard to the applicants' application to adopt a foreign child. All the above reports are favourable and recommend the applicants' application to adopt the child. This is an international adoption. There are certain conditions that the applicants must fulfill before this court can allow them to adopt the child. The first condition is that the applicants must be approved by the relevant adoption authorities in their country of origin. In the present case, the applicants have been assessed and approved by the relevant authorities in their country of origin, The Netherlands. This court had the benefit of reading the report prepared by the foreign adoption society. This court is satisfied that the applicants have been approved by the relevant authorities in The Netherlands to adopt a foreign child, and specifically a Kenyan child.

The second condition is that the applicants must be approved by the National Adoption Committee in Kenya to adopt a child in Kenya. The applicants have been assessed by the said National Adoption Committee. A certificate to that effect has been issued by the said committee approving the applicants' application to adopt a child in Kenya. The third condition is that the applicants must satisfy the court that they have fulfilled the legal requirements regarding the adoption, including having custody of the child for a sufficient period of time to enable bonding to take place. This period must not be less than three (3) months. It was clear to the court that the applicants have fulfilled all the legal requirements in respect to international adoptions. The applicants have had the custody of the child since 9th July 2010. In the period that the child has been in their custody, the child has bonded with them. This was evident from the reports prepared by the Director of Children's Services, the guardian ad litem and the local adoption society. The applicants have established that they have the financial and emotional capability to take care of the child.

Having evaluated all the reports on record, and the applicants' application seeking to be granted permission to adopt the child, it was clear to this court that it would be in the best interest of the child for the application for adoption to be allowed. The applicants have given an undertaking that they shall allow access to the approved adoption society in their country of origin to undertake post-adoption supervision for a period of three years from the time of the issuance of this adoption order. The applicants have executed an undertaking that if this court grants the adoption order, they will permanently assume all the parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if he was born to them in their marriage; they have been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that they shall adopt; that the child shall have the right to inherit their property; that an adoption order cannot be recanted, and further, that they shall not give up the child owing to any subsequent unforeseen behaviours or other changes in the child; that the adoption society in The Netherlands (foreign adoption society) shall provide annual follow up reports on the progress of the child to the adoption society in Kenya (local adoption society) for a period of three (3) years from the date of the arrival of the child in The Netherlands; that the applicants undertake to allow the representatives of the foreign adoption society in The Netherlands free access to the child at any reasonable time. The applicants further give an undertaking that they shall accord their citizenship to the child.

In the premises therefore, this court finds that the applicants have met the criteria set for international adoption. The applicants, G.J.J.L and K.De B are hereby authorized to adopt baby D.H. The child shall henceforth be known as D. H. G.L.L. E.H.L and J.M.H.M are hereby appointed to be the legal guardians

of the child should misfortune befall the applicants. The Registrar General is hereby directed to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2011

L. KIMARU
JUDGE