



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO.173 OF 2010

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY N.G – MINOR

G.M.....1ST APPLICANT

J. E.C.....2ND APPLICANT

J U D G M E N T

The applicants, G.M and J.E.C, are respectively Austrian and Australian nationals. They were married in Germany on 19th August 2006. The applicants are currently resident in Prien am Chiemsee in Germany. From their application, it is apparent that the applicants have made a decision to permanently reside in Germany. The applicants have not been blessed with any children due to biological reasons. However, the 1st applicant has two (2) children from a previous relationship. The 1st applicant works as an Orthodontist while the 2nd respondent is an Artist. The applicants wish to adopt a child, specifically a child from Kenya. The applicants were assessed by the District Youth Office in the City of Rosenheim in Germany which is charged with the responsibility of conducting pre-adoption assessment of the applicants to determine their suitability to adopt a child, specifically a foreign child. A report was prepared by the said office. The same is annexed to the present application. The same is favourable and recommends the proposed adoption. The applicants were further assessed by Help A Child e.V Kinder finden Eltern, a foreign adoption society based in Germany which has been duly approved by the National Adoption Committee of Kenya. The said society also prepared a report which is on record. It also recommends the proposed adoption. The applicants' application to adopt a child from Kenya was approved by the National Adoption Committee on 21st July 2010. A certificate to that effect was issued and is annexed to the application.

Baby N.G, the child that is the subject of these adoption proceedings, was on 18th September 2009 found abandoned at K village in Limuru. It was presumed that the child was born on 16th September 2009. A report was made to the Tigoni Police Station. The child was admitted to The Nest Children Home, Limuru. The Kiambu Children's Court committed the custody of the child to the said Children's Home pending further court proceedings. Efforts by the relevant authorities, including the police, to trace the whereabouts of the biological parents of the child, have been in vain. To date, no one has come forward to claim the child. This court therefore dispenses with the consent of the biological parents of the child for the purpose of these adoption proceedings. KKPI, the duly approved local adoption society declared the child free for adoption. A certificate to that effect was issued on 5th May 2010. The child was placed in the custody of the applicants on 13th August 2010 for compulsory foster care pending these adoption proceedings.

The court read the reports prepared by KKPI, the local adoption society, by the District Youth Office Rosenheim in Germany, which is charged by the German government with the responsibility of conducting pre-adoption assessment of the applicants, by Help A Child e.V Kinder finden Eltern, the duly approved foreign adoption society, by the Director of Children's Services and by A.A.O, the guardian ad litem. The court had the benefit of reading the reports prepared in Germany in regard to the applicants' application to adopt a child from another country. 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 permanent residence. In the present case, the applicants have been assessed and approved by the relevant authorities in their country of permanent residence, Germany. 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 Germany 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 13th August 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 by 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 permanent residence 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 she 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 Germany (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 Germany; that the applicants undertake to allow the representatives of the foreign adoption society in Germany 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.M and J.E.C, are hereby authorized to adopt baby N.G. The child shall henceforth be known as N.G.C M. R. M and J.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 14TH DAY OF MARCH, 2011

L. KIMARU

JUDGE