



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO.70 OF 2010

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF H.M.W – MINOR

W.M.R.....

1ST APPLICANT

M.J.R.....

.....2ND APPLICANT

R U L I N G

On 12th November 2010, this court stayed the adoption proceedings herein pending clarification by the applicants that in the event that this court grants the adoption order, the United States of America government will grant citizenship to the child that is the subject of these adoption proceedings. This court was concerned that although the applicants have been resident in Kenya for the past twenty four (24) years, and therefore entitled to apply for adoption of a child on the basis that they were foreign residents in Kenya for a period of more than three (3) years, the applicants had failed to persuade the court that the child would obtain American citizenship in the event that the applicants, as they will eventually do, relocate to the United States of America. At page 2 of its judgment, this court had this to say:

“If that be the case, this court cannot allow the applicants’ application to adopt the child unless it obtains confirmation from the United States

government that it will grant citizenship to the child if this court grants the applicants' application to adopt the child. As it were, the documents on record establish that the applicants have fulfilled all other legal requirements regarding a local adoption by a foreign resident in Kenya. However, if the applicants' country of origin cannot automatically grant citizenship to the child to be adopted, then the adoption order would be made in vain. This court takes cognizance of the fact that the applicants have been residents in Kenya for the past twenty four (24) years. This court cannot however overlook the fact that the applicants may eventually relocate to their country of their origin. If that be the case, what would happen to the child?"

The 2nd applicant has filed a further affidavit seeking to clarify the position regarding the question whether or not the United States of America government will grant its citizenship to the child should this court grant the adoption order. This court was partially persuaded by the argument advanced by the applicants. However, the determinant factor was a letter written to the court by the United States of America Embassy in Nairobi relating to a similar adoption case. In the said letter, the said Embassy had this to say:

"Regarding your request for proof that adopted children by Americans will receive American citizenship; the Child Citizenship Act of 2000 applies. Under the Act, Children who are adopted by American citizens in Kenya can acquire citizenship automatically when they enter the United States as lawful permanent residents (LPRs). In order to qualify, the adopted child must meet the following requirements:

- (i) Be adopted by at least one American citizen;*
- (ii) Be under 18 years of age;*
- (iii) Live in the legal and physical custody of the American citizen parent;*
- (iv) Receive an Immigrant visa from the American Embassy in Nairobi; and*
- (v) Be admitted as an immigrant for lawful permanent resident.*

Hague Adoption cases require an 1-800 petition (Petition to Classify Convention Adoptee as an Immediate Relative) approved by United States Citizenship and Immigration Services, and for the case to be vetted by the Embassy and Kenyan Ministry of Children's Affairs prior to an adoption being finalized. The U.S. Embassy would be able to look at the documentation to determine whether everything is in order to eventually issue an immigrant visa. If the High Court finds these adoption cases

suitable for approval, the Embassy would then issue the child an immigrant visa and the child would acquire citizenship upon arrival in the United States.”

In the present case, both applicants are American citizens. They have had physical custody of the child for a period of more than two (2) years. From the affidavit on record, it was evident that the applicants have had physical custody of the child since 11th November 2008. The child was born 11th September 2008. She is therefore less than eighteen (18) years of age. In that regard, the applicants have fulfilled three of the conditions that will entitle the child, on application to the American Embassy at Nairobi, to be granted permanent residence status in the United States of America and thereafter be granted American citizenship. From the explanation given by the American Embassy, it was apparent that under the **American Child Citizenship Act of 2000**, the child will be entitled to American citizenship provided the applicants fulfill certain procedural legal requirements regarding the registration of the child as an American citizen.

In the premises therefore, this court is persuaded that the United States of America government will grant citizenship to the child upon this court granting the adoption order. The applicants have therefore fulfilled the legal requirements to adopt baby H.M.W in their capacity as foreign residents in Kenya. W.M.R and M.J.R are hereby allowed to adopt baby H.M.W. Henceforth the child shall be known as R.H.R. S.M and A.M shall be the legal guardians of the child should misfortune befall the applicants. The Registrar General is hereby directed to enter this adoption order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF APRIL, 2011

L. KIMARU
JUDGE