



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO.204 OF 2010

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY M.W *alias* L.M – MINOR

J.Z. F.....1ST APPLICANT

J.F.Z.....2ND APPLICANT

J U D G M E N T

The applicants, J.Z.F and J.F.Z, are Dutch citizens. They were married on 24th December 2003 in The Netherlands. The applicants have not been blessed with biological children of their own due to medical reasons. In that regard, the applicants have already adopted one child, a female, from Ethiopia. The 1st applicant is a software architect while the 2nd applicant is a designer. The applicants are residents in The Netherlands. They wish to adopt a child, specifically a child from Kenya. In order to fulfill the legal requirements that would enable them adopt a child from a foreign country, the applicants approached their country's Ministry of Justice which has the mandate of dealing with inter-country adoptions, with a view to securing its consent to enable them adopt a child from Kenya. The said Ministry of Justice instructed the Council for Children Welfare at Breda to investigate the applicants with a view to establishing their suitability to adopt a child from another country. The report prepared by the said council is favourable and recommended to the said Ministry of Justice to grant permission to the applicants to adopt a child from another country. The recommendation was made on 24th June 2009. On 14th July 2009, the said Ministry of Justice granted permission to the applicants to adopt a child of foreign nationality. The applicants were further assessed by Stichting Africa-Netherlands, a foreign adoption society based in The Netherlands which has been approved by the Kenya 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 18th May 2010 approved the applicants' application to adopt a child from Kenya. A certificate granting the said approval was issued to the applicants on 23rd June 2010.

Baby M.W alias L.M (the child), was born on 21st July 2009 at the Provincial General Hospital Nyeri. The child was abandoned soon after birth at the said hospital by his biological mother. A report was made to Nyeri police station. The child was discharged from the said hospital and admitted to Love A Child Home on 20th January 2010. The custody of the child was committed to the said Children's Home on 10th March 2010 by the Children's Court, Nyeri. Efforts by the police and other concerned authorities

to trace the whereabouts of the biological parents of the child have not been successful. This court therefore dispenses with the consent of the biological parents of the child for the purposes of these adoption proceedings. The child was declared free for adoption on 21st July 2010 by Little Angels Network adoption society. A certificate to that effect is in the court file. The child was placed under the care and custody of the applicants on 20th September 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 Breda in the Netherlands, the Director of Children's Services and by M.M, 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. The Dutch Ministry of Justice has granted permission to the applicants to adopt a child from Kenya. 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 child of foreign nationality, 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 20th September 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 behaviour 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, J.Z.F and J.F.Z are hereby authorized to adopt baby M.W alias L.M. The child shall henceforth be known as L. M.C.Z. T.M.W.H.M.R and P.H.J.R 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 27th DAY OF APRIL, 2011

L. KIMARU

JUDGE