



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI LAW COURTS)**

**ADOPTION CAUSE NO.75 OF 2010**

**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF L.A – MINOR**

**J.A.A.....APPLICANT**

**J U D G M E N T**

The applicant, J.A.A, was born in Kenya on 8<sup>th</sup> June 1958. However, she relocated to the United States of America and acquired American citizenship on 2<sup>nd</sup> October 1997. Under Article 16 of the Constitution, the applicant qualifies for dual citizenship if she desires to reapply for her Kenyan citizenship. This is unlike the requirements of the previous Constitution. The applicant is a sole female applicant who wishes to adopt a female child. The applicant has not been blessed with biological children of her own. L.A (the child) was born on 4<sup>th</sup> August 2001 to D.A.O and S.O.O. S.O.O is the cousin of the applicant. The mother of the child died on 15<sup>th</sup> June 2008. The proposed adoption is therefore an adoption within the family. The father of the child is a casual worker. He informed the Director of Children Services and Little Angels Network, the local adoption society, that he was unable to take care of the child and therefore has consented to the child being adopted by the applicant. The father of the child has granted consent to the proposed adoption. He has been made aware that upon this court granting her the application to adopt the child, he shall have renounced all his parental rights over the child. The grandmother of the child S.A.A, who had the custody of the child, has also given her consent to the proposed adoption. To enable the applicant qualify to adopt the child, the applicant was assessed by LFS Carolinas, a non-profit child placing agency licenced by the North Carolina Department of Health and Human Services, in the United States of America. The said report is favourable and recommends the proposed adoption. The child was declared free for adoption by Little Angels Network adoption society. A certificate to that effect was issued on 8<sup>th</sup> April 2009. From the reports filed in court, it was evident that the applicant has taken care of the child and has even assumed the child's education in Kenya before the proposed adoption.

The court read the reports prepared by Little Angels Network, the local adoption society, LFS Carolinas, the non-profit child placing agency in North Carolina, the Director of Children's Services and by D.A, the guardian ad litem. The court had the benefit of reading the reports prepared in the United States of America in regard to the applicant's application to adopt a child from Kenya. All the above reports are favourable and recommend the applicants' application to adopt the child. This is an international adoption. However, the applicant established that she is related to the child she proposes to adopt. The mother of the child is deceased. The father of the child and the child's elderly grandmother are unable to take care of the welfare of the child. They have duly consented to the proposed adoption. There are certain conditions that the applicant must fulfill before this court can allow her to adopt the child. The first condition is that the applicant must be approved by the relevant adoption authorities in her country of origin. In the present case, the applicant have been assessed and approved by the relevant authorities in her country of origin, United States of America. This court had the benefit of reading the report prepared by the child placement agency. This court is satisfied that the applicant's has been approved by the

relevant authorities in the United States of America to adopt a child from Kenya.

For any proposed adoption by an American, the applicant must satisfy the requirements of the **United States of America Child Citizenship Act of 2000**. For such a child to be adopted, the child must be adopted by at least one American citizen. In the present case, the applicant established that she is an American citizen. The second condition is that the child must be under the age of eighteen (18) years. In the present case the child is nine (9) years old having been born on 4<sup>th</sup> August 2001. The third condition is that the child must be under the legal and physical custody of the American citizen parent. The applicant has established that she has had the legal and physical custody of the child prior to making the present application to adopt the child. The applicant will be required to seek and obtain from the American Embassy in Nairobi the requisite immigrant visa. The applicant told the court that she was informed by the staff at the American Embassy in Nairobi that the child's immigrant visa will be processed upon the court issuing the adoption order. This court is satisfied that the applicant has placed sufficient evidence before this court that she has fulfilled the requirements of the law of the United States of America that will enable the child to acquire, if not permanent residence in the United States of America, the citizenship of the United States of America.

Having evaluated all the reports on record, and the applicant's 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 applicant has given an undertaking that she shall allow access to the approved adoption society in her 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 applicant has executed an undertaking that if this court grants the adoption order, she will permanently assume all the parental rights and duties of the biological parents in respect of the adopted child; she shall treat the adopted child as if she was born to her; she has been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that she shall adopt; that the child shall have the right to inherit her property; that an adoption order cannot be recanted, and further, that she shall not give up the child owing to any subsequent unforeseen behaviour or other changes in the child; that the adoption society in the United States of America (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 United States of America; that the applicant undertake to allow the representatives of the foreign adoption society in the United States of America free access to the child at any reasonable time. The applicant further give an undertaking that she shall accord her citizenship to the child.

In the premises therefore, this court finds that the applicants have met the criteria set for international adoption. The applicant, J.A.A is hereby authorized to adopt baby L.A. The child shall henceforth be known as L.A.A.O. N.A.G and C. A 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 1<sup>st</sup> DAY OF APRIL, 2011**

**L. KIMARU**

**JUDGE**