

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

J U D G M E N T

The applicants, W.M.R and M.J.R, are citizens of United States of America. They are husband and wife. They were married on 28th July 1984. They have been blessed with five (5) biological children aged between thirteen (13) and twenty three (23) years. The applicants are both missionaries working with the African Inland Mission. They are based at Kijabe. They have been resident in Kenya since December 1986. They wish to adopt baby H.M.W (the child) under the rules governing adoptions by foreign residents in Kenya. The child was born at Kijabe Hospital on 11th September 2008. The mother of the child absconded from the hospital leaving behind the child two days after her birth. A report was made to Kijabe police post on 23rd September 2008. The Kiambu District Children’s Office was also informed. On 7th November 2008, the said Children’s officer allowed the applicants to have custody of the child due to overcrowding at the hospital. The child was discharged from the hospital on the same day on the undertaking by the applicants that they would comply with the law if they wish to adopt the child. On 28th April 2010, the Limuru Children’s Court formally committed custody of the child to St. Anthony Children’s Home for a period of three months pending formal adoption proceedings. However, actual custody of the child remained with the applicants.

The applicants were assessed by Little Angels Network, an Adoption Society and the Director of Children Services. The two organizations have filed reports before the court. Both reports are favourable and recommend the applicants’ application to adopt the child. However, the Director of Children’s Services expressed reservations on whether the United States of America, the country of origin of the applicants, can accord the citizenship of the applicants to the child. To clarify this position, the applicants sought and obtained an affidavit sworn by John J. Marandas, a legal practitioner in the State of Oregon specializing in US Immigration Law Practice. I have read the said affidavit including the annexed documents thereto. It appears that the United States government does not allow adoptions involving children from Kenya.

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 take 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 re-locate to their country of their origin. If that be the case, what would happen to the child?

The court will therefore direct that the applicants continue having custody of the child pending confirmation by the United States government through the US Embassy in Nairobi that in the event that the court grants the applicants' application to adopt the child, it will grant the applicants' citizenship to the child. In the circumstances therefore, the adoption proceedings herein are stayed pending the above clarification. It is so ordered.

DATED AT NAIROBI THIS 12TH DAY OF NOVEMBER, 2010

L. KIMARU

JUDGE