

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Adoption Cause 131 of 2008

IN THE MATTER OF: PM– AN INFANT

AND

IN THE MATTER OF: THE CHILDREN’S ACT, 2001

JUDGMENT

The applicants for this adoption application are CD. She is an unmarried Canadian lady who is 37 years old. She has been in Kenya since October 2007 and works as a volunteer for a social and religious body called Augustinians of the Assumptions, based in Njiru, Nairobi.

The applicant has been evaluated by the Kenya Christian Homes which is an adoption society properly registered by the Government of Kenya. She appears to earn about 38,000 Canadian Dollars a month from which she has saved about 3000 dollars. She has a pension fund, a life insurance, personal assets including a car and has invested locally in Safaricom shares.

Furthermore, she has been properly recommended from back home in Canada by the Quebec State’s adoption institution called Secretariat for International Adoptions for Canada (SAI) to adopt from Kenya whose adoption law appears to be recognize by the Canadian government. SAI has confirmed that if the applicant adopts the baby the subject of this case, it will assist her to have the child apply for Canadian Citizenship. It is also on record that Quebec law recognizes SAI as the Central Adoption Institution. SAI is recognized under the Hague convention matters of adoptions and children affairs.

Towards this application SAI has given assurance that it will file post adoption reports to Kenyan authorities on the welfare of the child herein if adopted for three years following the adoption.

The child in this case is called PM who is about two years old, and Kenyan. He was a found abandoned in California Estate in Nairobi on 16th March 2007 by Salah Mohamed. The case was reported to Shauri Moyo Police Station before the child was sent to St Bernados Home. The child was committed to the Home under cause No. 107 of 2007. The child was released to the applicant by Kenya Christian Homes on 21st July, 2008 for mandatory fostering. The applicant has taken care of the child to-date despite his poor health which require proper medical attention in Canada, without much delay.

There are three reports on the record. The Guardian ad litem has recommended adoption as prayed for in the best interest of the child. So has, the adoption society – the Kenya Christian Homes on the same basis. It declared the child free for a adoption on 14th November, 2007. The final report was filed by the Director of Children Services. The latter did not at first recommend the adoption on the ground that the applicant’s home report by SAI was not recognized by the Kenya National Committee for adoption. It became clear that the Kenyan National Committee did not recognize SAI because SAI is not registered locally as a Central Canadian or Quebec Institution recognized for adoptions. Further inquiries about SAI showed that it is a properly recognized institution for adoptions in Quebec and that it is recognized under the Hague convention. On being asked why SAI is not immediately registered among foreign bodies registered for adoptions, a representative from the Director of Children’s Services could not give any reasons. She however admitted that the reasons for not registering SAI and recognizing it in Kenya, are

not ethical reasons and proper processing thereof could be possible.

I have carefully considered the grounds upon which this case is based. I am satisfied that the Applicant is a fit and proper person to adopt Baby PM. She has financial capacity. She has a clean criminal record. She has and is working as a social worker for sometime in Kenya. She has invested in Kenya. Bonding between her and PM is excellent. She has not breached any of the basic conditions for adoption. Although she is single, she has been cleared as a case under special circumstances.

I accordingly find no reason to deny her the privilege to adopt Baby PM. I observe further that Baby PM is sickly and needs specialized medical treatment. If the adoption is refused, not only will Baby PM in his sick condition be returnable to the Children's Home. He will indeed have nobody to specially care for him in the manner he is being cared for presently. The best interest of Baby PM is in allowing her to live with the person who in this world has chosen to truly care for him. That person is the applicant and the court will make the necessary orders:-

ORDERS

- 1) The applicant CD is hereby authorized to forthwith adopt Baby PM whose future name will be JS LD.
- 2) This adoption should be entered in the Register of adoptions by the Registrar General.
- 3) The Director of Children's Services is hereby directed to issue to Christiane Dupuis a letter of "**no objection to travel with the baby**" to assist her to get a passport for the baby.
- 4) The Principal Immigration Officer is directed to assist CD and her adopted baby abovementioned to exit the Republic of Kenya when that arises.

Dated and delivered at Nairobi this 22nd day of May, 2009.

D A ONYANCHA

JUDGE