



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Adoption Cause 111 of 2009

IN THE MATTER OF ADOPTION OF AW– A CHILD

DR. AKT.....APPLICANT

JUDGMENT

This Originating Summons dated 4th September, 2008 is presented by a sole Applicant whose husband unfortunately left this world on 20th May, 2000, after their long marriage solemnized on 27th December, 1975.

She is a Tanzanian citizen but is a resident of Kenya since 1st September, 2000. She is currently employed as an Under Secretary-General of the United Nations at UN – Habitat. She holds a Diplomatic Passport Laissez – Passer [No.....].

She has four biological children from the said marriage the last born being 17 years of age. All the children are fully supporting her in her decision to adopt a needy child. Her daughter K.A.T, resident of Makongo Juu, Dar es Salaam in United Republic of Tanzania and of P.O. Box [*Particulars withheld*] Dar es Salaam, has given her written consent to become the child's legal guardian if the order of adoption is granted. (Annexure AKT 15).

She has provided medical report for her mental and physical health.

Immigration Division of Ministry of Home Affairs of Tanzania has, vide its letter dated 11th April, 2008, confirmed that on adoption the child shall be welcomed and allowed to live in Tanzania. She has further produced Police clearance Certificate from Ministry of Home Affairs, Tanzania being Certificate No.[.....] dated 14th April, 2008.

It is thus amply shown that the applicant is socially, physically, financially and emotionally able and apt to look after the child.

As per the Records before the court, the child was born on 12th November, 2006 at Murang'a District Hospital. Birth certificate No.[*Particulars withheld*] is before the court. Her mother absconded and left her at the hospital on 13th November, 2006. The matter was recorded at Muranga Police Station at O.B No.12.8/12/06. On 8th December, 2006 she was transferred to Nest Children's Home Kiambu by Senior Resident Magistrate, Kiambu, vide P&C. Cause No.06/07 committed to the said Home on 23rd February,

2007. Muranga Police vide its letter of 22nd May, 2007 confirmed that no one had claimed the child as at that date.

The child was then placed with the Applicant for mandatory bonding period prior to adoption on 29th January, 2007. A Foster Agreement was duly executed on that day.

The child is declared free for adoption by Kenya Christian Home on 20th June, 2008.

Thus in ordinary matter, this application can be an ideal one and the court would not have to consider anything further.

However, only factor in this matter for the court to consider is that the Applicant is a sole Applicant and is a foreigner who would at one point of her life go back to her country. Although she has taken the child out of the country as she was also appointed a legal guardian of the child on 25th April, 2008 by the Children Court, Nairobi. Those trips abroad were taken by the Applicant in the course of her duties and the child accompanied her on several occasions.

The Director of Children Services has observed as regards capability of the Applicant as under:

- Ø The Applicant is of strong faith and a devout catholic Christian. She has been recommended for this proposed adoption by Father Martin Solma of Bro. Vincent House Marianists, Nairobi.
- Ø She is financially endowed and is capable to provide well for the child in this matter.
- Ø There is no doubt that the Applicant has the best interest of the child at heart.
- Ø The child has been accepted by the Applicant's immediate family members (children). Her daughter K.A is the legal guardian in this matter. Her children (K. A, K H M, A T and M T) each signed an affidavit of consent over this proposed adoption dated 12th March, 2008.
- Ø Everything being equal, she should be there to see the child through to childhood. But in the event that she is dead or incapacitated and more so being a single parent (widowed), she appointed legal guardian for the child in this matter. The legal guardian who is her daughter K. A T signed an affidavit of consent dated 21st April, 2008."

It further states:

"She, in our opinion meets the social parameters considered important to taking on parental responsibilities and custody of the child as would be conferred permanently by an adoption order. The child in this matter was abandoned by her biological mother and had been at a charitable institution up to the time that the Applicant fostered her in. Adoption would be in her best interest".

This Applicant is a Tanzanian citizen but with her position in UN is exposed to all the cultures and her citizenship is extended to almost a world citizenry. She is single, not by choice but because of God's wish that she became a widow. After giving birth to her four children, her motherly instinct has not yet been stated. She intends to expand her love to a needy child which can attract admiration from any good thinking person. Moreover, she is from our neighbouring country and the child would not face any cultural shock when she would eventually be taken back to Tanzania where she is welcome.

All the reports – including seven reports from the guardian ad litem, as well as from Adoption Society, speak with one voice that the adoption shall be in best interest of the child.

Section 4 of the Children Act has loudly declared that any judicial authority shall, in all actions taken by it, take into consideration the best interest of the child.

The Applicant has taken a bold step of taking a needy child under her protection and looking to the circumstances of the case, I do not have to seek for any special circumstances.

In short, I do exercise my discretion under Section 158(2) (d) of the Children Act and grant the Applicant authority to adopt this child, who in my view, has found a family who would love and care for her.

The child shall henceforth be known as Anjela Rutungilege Tibaijuka, whose date of birth is 12th November, 2006.

I also appoint K.A.T (a daughter of the Applicant) as a legal guardian to A.

These orders be recorded in the Adoption Register held by the Registrar General.

I hereby discharge the Guardian ad litem.

Orders accordingly.

Dated, Signed and Delivered at Nairobi, this 31st day of July, 2009.

K.H. RAWAL

JUDGE

31.7.09