



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Adoption Cause 45 of 2009

IN THE MATTER OF ADOPTION OF E. I. M ALIAS J.W – (INFANT)

JUDGMENT

Before the court is the Originating summons dated 14th April, 2009 wherein the two Applicants the couple of Dutch Nationalities have prayed that they be authorized to adopt the child herein. In the Originating Summons they have averred that they have complied with all pre-adoption process in the Netherlands and post adoption process in Kenya as per the provisions of the Children Act.

The male Applicant was born on 12th December, 1969 and the female applicant is born on 14th July, 1975. They have annexed their birth certificates. Their home address is JERRY BOCKSTRAAY

[Particulars withheld] CB UTRECHT, the Netherlands. They have annexed their respective Dutch passports bearing numbers [Particulars withheld] and [Particulars withheld] issued on 29th June, 2007 and 18th October, 2004 respectively.

The male Applicant works as a [*profession withheld*] with Netherlands Study Centre for Technology Trend for the Last six years and earns annual emolument of €55,278 and the female Applicant works as a Lecturer with M Academy, University for Teacher Education for the last seven years and earns annual emoluments of €33,243/31 (Annexure G(1) and G(ii) of the affidavit in support). They have also annexed a letter from Post Bank confirming that the male Applicant has an account with the Bank since 13th January, 1995 and has conducted his account properly. The Bank statements are also annexed.

The Council for Child Welfare at ARNHEM, after receiving a request to investigate the Applicants from the Ministry of Justice in the year 2006, assessed the Applicants and has prepared a report of 6th May, 2008 {file No. Haarlem 30148 Well, 20060315 (Annexure HC(i))}. It is a very detailed report and it confirms what the Applicants have averred in this cause. The report advises the Ministry of Justice to grant permission to the Applicants to take one (or more i.e. two) foreign adoptive children) into the family.

Consequent to the said report Ministry of Justice granted permission to the Applicants to adopt the child. The permission is valid upto 1st May, 2010 on conditions that:

(a) The child is brought in a correct and careful manner and

(b) That a medical certificate be produced to the effect that there are no grounds that the child is suffering from any dangerous infectious disease or has any protracted physical or mental illness

and

(c) that the child natural parents or legal representative have relinquished all right to the and child that the Kenyan authority has agreed that the Applicants can adopt the child.

The Applicants have also produced before the court the detailed medical reports (vide Further affidavits sworn on 23.7.09) confirming their averments that the female Applicant was unable to conceive because she has endometriosis. This fact led to their unanimous decision to adopt a needy child and their decision is supported by their family and friends.

Except for the above condition the Applicants are in good physical and mental health.

One **H.K.VAN B** holder of passport No.[.....] issued on 15th August, 2007 has consented to be the child's legal guardian in any untoward event. (Annexure 's'). She is shown satisfactorily as having been married by production of her marriage certificate vide further Affidavit sworn on 23rd July, 2009.

The Applicants have shown that they do not have any criminal records {Annexure R(i) and (ii)}.

The National Adoption Committee of Kenya has also approved the Applicants to adopt a Kenyan child and has issued an Approval Certificate No [.....] dated 5th November,2008.

It is also shown that the child shall be included in the Health Insurance of the Applicants on issuance of the Adoption order.

The Embassy of the Kingdom of the Netherlands in Nairobi has confirmed that on issuance of the order of the court and certificate by the Children Department, the child shall be issued with Dutch Nationality and a passport conferring full rights to the child.

As regards the above satisfactory facts of compliance of the provisions of the Children Act as well as National Dutch Laws, I shall now dwell on the background of the child.

The child was abandoned by her mother identified as Jane Wambui at Thika District Hospital on 24th October, 2006 a day after the birth. The court asked for and was shown the Hospital records of admission book, abscondee's register and delivery book. The names of the aforesaid mother appear on those documents. After report to the Thika Police Station, the said fact was confirmed by its letter dated 30th October, 2006. He was then committed to New Life Home, Nairobi on 28th December, 2008 by the Nairobi Children Court vide P&C. No.150/2006.

The Thika Police by its letter of 30th April, 2007 Ref.No.C/ORG/5/22/75/07 confirmed that no relative had come to claim the child and that the police had exhausted their investigations.

Thereafter the child was placed in care of the Applicants after executing Forster Care Agreement on 13th January, 2009. Since then, the child is with the Applicants and within short time has bonded well with them and now speaks fluent Dutch. He is medically declared fit and healthy.

Little Angels Network issued certificate to declare the child free for adoption on 15th October, 2008.

The New Life Home Trust has consented to the adoption and has relinquished all its rights over the child.

The Children Department and Adoption Society i.e. Little Angels Network have made their reports dated 8th June, 2009 and 9th April, 2009. The guardian ad litem L.L. L has also prepared her report and filed it on 29th June, 2009.

They have without any reservation recommended the Adoption and have declared that such order shall be

in the best interest of the child.

Having given due consideration to the facts of this case, I am satisfied that the Applicants have been found to be apt and capable of adopting a child by the authorities of their own country and that of Kenya I am further satisfied by that the child was abandoned by his biological mother a day after his birth and that she is not been traced by authorities and that she has not come forward till to date to claim the child. The New Life Home Trust has given appropriate consent and undertaking relinquishing its right over the child. The child is declared physically healthy and I have seen him in my court and found him very active and receptive and confident even in the strange environs of the court.

In short, it is shown to my satisfaction that the three people before me are well bonded and the child has taken the Applicants as his parents. I am thus persuaded to and do find that the order of adoption shall be in the best interest of the child.

In the premises, I do hereby authorize the Applicants to adopt the child herein to be henceforth known as E.I.M Van W and his birth date is authorized by the Hospital as 23rd October, 2006.

I appoint H.K Van B holder of Dutch passport No.[.....], to be the child's legal guardian.

I further direct Stitching Afrika to send progress reports of the minor from the date of arrival in the Netherlands, quarterly for first 3 years and send the report to the Children Department and Little Angels Network.

I also ask the Director of Children Services to give certificate of compliance of all relevant Laws.

The Registrar General to enter the orders in Adoption Register.

Finally, I discharge the Guardian ad litem herefrom

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

K.H. RAWAL

JUDGE

31.7.09