



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Adoption Cause 17 of 2009

IN THE MATTER OF ADOPTION OF R. BABY P.W

JUDGMENT

The applicants herein are Swedish Citizens. They are born on 7th June, 1964 and 2nd October, 1967 respectively. Thus, they are within the age limits prescribed by law.

They are believers in Christianity and Protestants. A letter dated 3rd April, 2008 from Sven-Gunnar Hultman a Pastor at Gavle. They are married on 23rd May, 1998 and have one child of marriage D.T.J born on 8th April, 2005.

The male Applicant is a Forklift Driver and the female Applicant is a teacher. They have produced the evidence of their permanent employment. I also note that the Applicants have produced documents duly certified and notarised to support their averments made in the statement annexed to their originating summons dated 18th February, 2009.

The statement contains the consent by Family Law Advice Officer dated 16th May, 2007. It contains details of the antecedents of the Applicants, their financial status, health and reasons for making an application to adopt a foreign child.

They have been cleared by a certificate from Swedish National Police Board, dated 21st April, 2008. The consent pursuant to Chapter 6, Section 12 of the Social Services Act of Sweden to receive a foreign child for adoption was issued on 5th February, 2008 which is valid for two years. It specifically states that the infant should not have attained 2 years.

They have annexed several recommendation from their family and friends to show the support they have for their decision to adopt a foreign child.

They have signed an undertaking by Adopters (Foreign Adoption) pursuant to Reg. 26 of, regulations contained in Kenya Subsidiary Legislation, 2005. Moreover, they have been recommended to adopt by the National Adoption Committee established under the Children Act (No.8 of 2001) on 21st January, 2009.

Mr. C-G J, born on 14th March, 1965 and Mrs. L. J born on 21st March, 1968 both of Sevravagen, S – 811 95 Jarbo, Sweden have agreed to be the legal guardians of the child herein. Their affidavit was sworn and notarised on 21st April, 2009.

In view of the above mentioned facts, I do find that the Applicants have fulfilled all the legal requirements stipulated in Section 162 of the Act in respect of a foreign adoption.

I further note that “**Children above All – Adoption Sweden**” has undertaken to supervise the Applicants and child and to furnish annual reports for a period of three years. The Applicants in any event have also undertaken to furnish such reports to Kenyan Authorities.

Now I shall deal with the facts as regards the child.

The Acknowledgement of Birth Notification (for parents) issued and dated 12th September, 2007 confirms that a

male child was born to one P.W.N on 12th September, 2007. The father's name is simply mentioned as N. He was born at Kenyatta National Hospital at GFA ward. As per the report dated 14.4.08 from Medical Social Work Department of the said Hospital, the child was found to be Healthy – HIV Negative. In its remarks the Social Officer has stated that since baby was abandoned he recommended the placement at Thomas Barnardos Home.

I do pause here and wonder, what happened to the child since his birth on 12th September, 2007 upto 14th April, 2008. The case summary of the child shows the Admission on 18th September, 2007 and discharge on 9th April, 2008.

The letter dated 22nd February, allegedly from Senior Medical Worker at the said hospital gives postal address of the mother and father, both being P.O. Box 133, Kiambu. Interestingly, it also states that the mother had two children born in 2000 and 2005. The said letter was addressed to Provincial Children Officer, Nairobi and that Officer has written letter dated 10th April, 2008 to the Administrator Thomas Bernandos Home, reporting the same details and seeks the care and protection for the “**baby P**”

He has reiterated that efforts to trace the mother have been unsuccessful. The Kenyatta Police Post has written a letter dated 14th April, 2008 reiterating the same efforts.

I wonder whether they have made any efforts to trace the parents on the Post Office Address which is shown to be the same for both parents. I also wonder how the information as regards two children of the mother was obtained. I do not have any report from the police or chief of Kiambu. With these in my mind, I asked both the Adoption Society and the Children Department to give me more information on those issues.

They both filed further Reports. The Kenya Children Home by its further Report filed on 6th July, 2009 has confirmed that their officers visited the Kiambu Post Office on 30th June, 2009 and got confirmation that P.O. Box Number given by the biological mother did not belong to either of the persons mentioned as parents.

The Kiambu Police Station also was approached but the Station was unwilling to provide any assistance even after they were referred to them by the Provincial Children Officer, Kiambu.

However, they could obtain a letter dated 1.7.09 from Kenyatta National Hospital confirming that the child stayed at the Hospital from September, 2007 to April 2008. It also confirms that the child was abandoned on birth.

The Director of Children Services filed a further report on 6th July, 2009.

It states that District Children Officer, Kibera made futile efforts to trace the biological parents of the child through the address given.

It also reiterates the process taken in respect of the child, to wit;

1. KNH referred the case to Provincial Children Officer on 22nd February, 2008.
2. On 10th April, 2008 the Provincial Children Officer sought formal placement of the child dated Thomas Bernandos Home.
3. Kenyatta National Hospital Police Post confirmed on 1st August, 2008 that no one has claimed the child and the child was released to Thomas Bernandos Home. Eventually, the child was committed to the said Home under Section 119 of the Children Act.

The Adoption Society in view of the above facts have issued a certificate of freeing a child for Adoption dated 13th August, 2008. It has also given its recommendation in favour of the order of Adoption.

Similar is the view of the Children Department. I have considered their respective reports.

The Guardian ad litem F.G.M has also found the Applicants suitable and capable for the grant of Order of Adoption of the child.

By a further affidavit sworn by the Applicant on 28th June, 2009, the consent under Chapter 6, Section 6, 2nd paragraph of the Social Services Act, 2005 was extended for two years from 27th May, 2009. (Annexure “**STLJ 50**”).

As per Annexure STLJ 47, a letter dated 27th November, 2008 from Chief Legal Officer of Swedish Inter-country Adoptions Authority it is provided *inter alia* that, consequent, on Sweden's accession to the 1993 Hague Convention, this Convention has the force of Law in Sweden. Thus, the Adoption ordered in accordance with the Convention is recognized in Sweden. It also further confirmed that if a child is under 12 years and one of the Adopters is a Swedish citizen the child acquires Swedish citizenship as per the Swedish Citizenship Act.

With the above facts before the court, I am of the opinion that the Applicants have fulfilled the requirements of Section 162 of the Children Act, I am also satisfied that the Applicants have successfully completed pre-adoption process in Sweden and post adoption process in Kenya.

I also form an opinion that the Applicants are capable and suitable persons to adopt a Kenyan child, and the child herein in particular, as they have bonded very well with the child.

I am also satisfied that the child is duly freed for adoption by the Adoption Society and that the grant of order of adoption in favour of the Applicants shall be in best interest of the child. I am further satisfied that the Applicants are aware and have accepted the child's rights over them as their own child. As per the facts before the court, I am also satisfied that the Applicants have not received or agreed to receive or no one has given or agreed to give the applicant any payment or any reward in consideration of the adoption, and that all required consents are obtained and filed.

In short, I authorize the Applicants S.T.L. J and L.J of V.A Gavle, Sweden to adopt the child to be known as R.T.J born on 12th September, 2007.

I further appoint L.J and C.G.J (the brother and sister-in-law of the first Applicant) to be the child's legal guardians.

Children Above All Adoption Sweden Society to send reports as per its undertaking.

The above orders be entered in the Adoption Register, held by the Registrar General.

Dated, Signed and Delivered at Nairobi, this 17th day of July, 2009.

K.H. RAWAL

JUDGE

17.7.09