



REPUBLIC OF KENYA

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

Adoption Cause 47 of 2007

IN THE MATTER OF BABY J.M.ALIAS P.M THE INFANT

L. E.H..... 1ST APPLICANT

& V. S.H..... 2ND APPLICANT

JUDGMENT OF COURT

This is an application by two applicants, L.E.H and V.S.H seeking authority of this court to adopt Baby P.M. The applicants are husband and wife of many years. They presently have seven children, six of whom are their natural children while the 7th one is an adopted one and is of African origin. The applicants are United States of America citizens who are residing in Kenya, apparently working as Missionaries. Presently they live in the Rift Valley Academy where they are assigned the title of dormitory parents. Their work-permit and marriage certificate is exhibited in this application.

The applicants appear to be persons of sufficient means by which they support their large family. It is indicated that they earn about \$4000 per month taking into account their several sources of income.

The material before me show that the applicants have been investigated by various relevant agencies and are shown to be people of good and clean background. They have no criminal record and have been allowed by Maryland State Agency for adoption to adopt a child from Kenya. The Kenya Criminal Investigation Department has also given them a certificate of good conduct. And so has the United States Department of Homeland Security.

The child the applicants wish to adopt is called Baby J.M. He was born in July, 2006 probably in a village called M where he was found abandoned. On being found, he was taken to Lumumba Health Centre from where he was sent to Kijabe Hospital after the matter was reported to Machakos Police Station for investigations.

On 18th September, 2006, Baby J was placed in the foster care of the applicant by Machakos Children court in case Number 21 of 2007. The child has never been removed from them since. The child was on 14th November, 2007 declared free for adoption by the Child Welfare Society. In the meantime nobody has ever claimed the baby.

There are three reports of investigations carried out by the **Guardian ad litem**, the Child Welfare Society and the Director of Children Services. The three reports, without exception, recommend that the Applicants be allowed to adopt Baby Jeremy. All three were each represented in court.

Mr. N from M & Company Advocates, in his able submission impressed upon the court that it was important to take into account the fact that the High Court at Machakos had, about two years ago, authorized the applicants to adopt another Kenyan black child into the family. He had instructions accordingly to indicate that the applicants felt that the court should grant this application in order to give the already adopted child a companion who is black. I found this approach a little racial and totally misplaced. If what Mr. N was saying is real and true then it meant that the applicants were confessing that the already adopted child, known as K, was lonely and unfitting in the white family to which he was adopted. It could also mean that K is presently lonely and uncomfortable among the other children of the Applicants because he is black and they are white. That is the only reason why K's parents would want K to have another black child who can give him company. This thought perturbed and worried the court raising many other questions. For example, has Kent ever been accepted by his white sisters?

Mr. H, the first applicant tried hard to wipe away the wrong impression that he and his wife had already clearly smeared on the inside walls of this court. He had his wife apologized profusely. The court however, thought it wise to sleep over the issue by reserving this judgment.

I have now carefully re-examined the matter while being reminded that the greatest issue in these kind of cases is the general welfare and best interest of the child. To that end I observe that Baby Jeremy is effectively, an orphan who has no near relative since he was abandoned and nobody has ever claimed him. The Applicants have presently shown him kindness and love. They have given a roof over his head and promised to look after him until he is able to look after himself. I take their background as missionaries and Christians seriously. I accordingly feel persuaded, despite the racial slur, that the best place and the best interest of Jeremy, is with the Applicants. I take it that they did not mean it and were possibly commenting in the best interest of Baby J, when they introduced, the colour slur. I expect that having noted what such careless comments in relation to colour and race, can cause, they will in future find better and more informed ways of dealing with it. I will allow the application and authorize the adoption.

I also, in conclusion, express the view that it may be wise and in the best interest of the children of the applicants, for the applicants not to think of adopting any more children.

ORDERS

1. The applicants, L. E.H and Vicki S.H. are hereby authorized to immediately adopt Baby J. M who hereafter will be known as J.R.H.
2. The Registrar-General is hereby directed to enter this adoption in the official register of adoptions.
3. The Principal Immigration Officer will facilitate any travel out of Kenya of the Applicants and J.R.H.

Dated and delivered at Nairobi this 18th day of April, 2008.

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D A ONYANCHA

JUDGE