



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT BUSIA

Adoption Cause 179 & 180 of 2007

IN THE MATTER OF BABY M ALIAS G

AND

J C S.....1ST APPLICANT

K R S.....2ND APPLICANT

AND

Adoption Cause 180 of 2007

IN THE MATTER OF BABY V N M ALIAS S

AND

J C S.....1ST APPLICANT

K R S.....2ND APPLICANT

JUDGMENT

The applications before the court are the two Originating Summons dated 31st October, 2007. In them the Applicants JCS and KRS sought authority of this court to adopt (a) Baby M alias G in Adoption Cause Number 179 of 2007 and (b) Baby VNM alias S in Adoption Cause No. 180 of 2007. As the applicants are same although seeking to adopt two different babies, the court on application by the Applicants, consolidated the two applicants by its order dated 25th January, 2008. On the same date the court appointed EMK as Guardian ad litem in respect of both causes during the proceedings of adoption of both babies.

In view of the consolidation aforementioned and despite the fact that this court decided to receive information concerning each of the two babies separately on different days, this judgment is a consolidated judgment of the two adoption causes aforementioned.

The first Applicant is a United States of America national who is 33 years old. The 2nd applicant is also a United States of America national and is 31 years old. The applicants are a married couple since 3rd July, 2004. They had visited Kenya as tourists in February, 2005, but it was in July, 2007 when they came a second time but specifically with an intention to adopt children from Kenya.

JSC, the 1st applicant, is said to be a manager in a soft-ware development firm called Automatic Data Processing Incorporated in the United States of America. He is said to hold a Masters Degree in Science and Finance and earns US\$76,000/- plus a medical insurance cover of U.S \$7000. The 2nd applicant KRS retired as a teacher and presently is a housewife. The two own two jointly purchased mortgage town properties worth US \$290,000 and \$240,000/-, respectively. They currently receive monthly rents from each of the said properties and consider their total monthly income to be sufficient to take care of their needs and the needs of their children if they are successful in adopting the two babies herein mentioned.

In support of this application the Applicants produced a written report from Bethany Christian Services, a North Carolina recommending agent which initially carries out investigations to establish suitability persons wishing to adopt children. The report was verified by North Carolina Adoption Services, a state agent which supervises adoptions. The report is herein marked JKS 11. The report highly recommends the two Applicants as suitable and capable of adopting children. It confirms also that the marriage between the applicants is firm and that there is a love foundation between them that can sustain children demands and burden.

In compliance with international requirements, the Applicants appear to have been assessed by the United States Citizens and Immigration Services. They were given a favourable approval in exhibit JKS 15. The exhibit confirms that the children adopted will be required through their parents to comply with United States of America immigration laws which require that the parents properly fill and lodge the relevant documentation. It was however averred that once such documents are filed properly the adopted children are regarded almost as United States citizens and everything is done to help them become registered first as residents and thereafter as citizens. This assurance is contained in the letter of the Chief of General Staff – U.S.C.I.S. dated 18th April 2008 and herein marked exhibit NM 5 attached to the supplementary affidavit.

The records also confirm that the Applicants were approved to adopt children from Kenya by the Kenya National Adoption Committee whose certificate is herein marked JKS 13. In addition, the Little Angels Network, an adoption society, also investigated the Applicant's suitability to adopt the two children earlier mentioned. In its report marked JKS 14, the society approves them and recommends that they be authorized to adopt the children. The society in a certificate herein marked JKS 6 declared the two children free for adoption. It had on its part visited the Applicant's home to gauge the level of care and control the applicants advanced to the two children. Their report confirms that bonding between the children respectively, and the Applicants, was strong and excellent.

There is also on record reports filed by the Kenya's Director of Children Services filed in compliance with the directions of this court made on 25th January, 2008. The Director investigated independently the suitability of the applicants to adopt the two children. The report dated 26th February, 2008 recommends that this court do grant the authority to the Applicants to adopt the children. So also was a report filed herein by the Guardian ad litem as directed by this court on 25th January, 2008.

I have carefully considered the material upon which these two Originating Summons seeking authority to adopt the two children, are based. I observe that all the three local investigative agents' reports aforementioned, do recommend that the Applicants be allowed to adopt the two children. The applicants have in addition, a clean criminal record. They are financially adequately endowed. Their marital relationship with each other appears to be stable and therefore suitable to be a basis of rearing children. There is some assurance that the children if allowed to be adopted have a high chance of being accorded a United States of America residence and thereafter, citizenship. Bonding between the children and the Applicants is shown to be excellent and stable.

On the other hand Baby M alias G was an abandoned child collected from an abandoned building at Thika and referred to Thika Police Station on 31st August, 2006. She was received in Happy Life Children's Home on 26th September, 2006. She was committed to the home by a court order and later declared free for adoption by the Little Angels Network on 18th July, 2007. The police report shows that nobody claims the Baby. She was given to the Applicants for foster care and protection on 30th July, 2007. She is confirmed to be living happily and the bonding between her and the applicants is said to be excellent. If the authority sought herein is not granted, the children will be forced returned to the Children's home for care and protection

The background history of Baby VM alias S is no more comforting. She was born at Kenyatta National Hospital in February, 2003 by a mother whose identity was never sufficiently ascertained. The mother absconded immediately after the birth leaving the child in the Hospital Nursery. The child had birth complications arising due to premature birth. She was later to be placed at Nairobi Children's Home and then at Happy Life Children's Home until 22nd March 2006 when a committal order was made giving the Home authority to protect the baby. This remained the position until the child was declared free for adoption. She had hearing and speech disabilities which the Applicants have had to cope with but whose condition has greatly improved.

Having taken into account and considered all the facts of these two cases, I am satisfied that the best interest and welfare of the two children is to grant the authority sought. The applicants are suitable and able persons to adopt the two children. The children on the other need the applicants' ability and willingness to face the uncertain future. The children will be assured of a family, security and education. The love now being demonstrated between them and applicants is expected to grow. Standing on the way of their future hope and prospects, even under the present international problems and uncertainties is not the intention of this court.

For the above reasons this court will uphold the two children's hope and expectation in granting the authority to be adopted by the applicants in the following orders: -

ORDERS

1. The Applicants **JCS** and **KRS**, are hereby authorized to forthwith adopt Baby M Alias G whose future name will be **ZDES** and Baby **VNM** alias S, whose future name will be **SLVS**.
2. The Registrar-General is hereby directed to enter the two adoptions in the Register of Adoptions.
3. The Principal Immigration Officer is directed to assist the Applicants to exit the Republic of Kenya if and when that will arise.

Dated and delivered at Nairobi this 6th day of June, 2008.

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D A ONYANCHA

JUDGE