



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Adoption Cause 1 of 2005

IN THE MATTER OF CHILDREN ACT NO. 8 OF 2001

AND

IN THE MATTER OF ADOPTION OF S.J. T

**AND IN THE MATTER OF AN APPLICATION FOR ADOPTION ORDER OF THE CHILD BY A. N. S AND
A. J. T. S**

BETWEEN

A. N.S

A.J. T. S.....APPLICANTS

VERSUS

THE CHILDRENS DEPARTMENT.....RESPONDENT

RULING

By their application by way of a Notice of Motion filed on 16th September 2008, the applicants, A.J. T. S and A.N.S, pray for an order that the order of Lady Justice Joyce Khaminwa made on 3rd January 2005 and issued on 3rd February 2005, granting an adoption order in respect of the child S.J.T.S to the applicants, be reviewed in favour of the re-adoption of the said child by the same applicants. The application is made under Section 80 of the Civil Procedure Act, Order XLIV Rules 1, 4 (1) and 6, Order L Rule 1 of the Civil Procedure Rules and Section 170 (4) of the Children Act 201.

The application is grounded on the premises, *inter alia*, that when Lady Justice Khaminwa granted the said adoption order on 3rd January 2005, she did so without the involvement of any registered adoption society in Kenya who would have provided a declaration that the said child was free for adoption and further that the applicants had not obtained a Home Study Assessment from the United Kingdom.

There has been delay in making this application which the applicants say was occasioned by the long process of compiling the International Home Study Report which was only received in Kenya by the Child Welfare Society (CWSK) on 6th May 2008.

The applicants plead that in the interest of justice the said order ought to be reviewed and orders granted for the re-adoption of the said child now that the requirements for entry into the United Kingdom of an adopted child, as spelt out by the Immigration Section of the British High Commission, have been complied with.

The application is supported by an affidavit sworn by A.N.S, one of the applicants who has sworn the affidavit on her own behalf and also on behalf of her co-applicant, A.J.T.S. In the affidavit, it is deponed, *inter alia*, that after obtaining the order made by Lady Justice Khaminwa, the couple lodged an application for a visa for the said child at the British High Commission which application was refused on the grounds that the adoption had irregularly been conducted

without the involvement of a registered society in Kenya who, as aforesaid, would have provided a declaration that the said child was free for adoption in accordance with Section 156 of the Children Act and that the applicants, as the intended adoptive parents, had not acquired a Home Study Assessment from an approved overseas adoption agency in the United Kingdom. It is also deponed that the compilation of the International Home Study Report which the British High Commission required, took a long time to complete and was only received by the local adoption agency, the Child welfare Society of Kenya (CWSK), on 6th May 2008. It is further deponed that CWSK carried out its own assessment and its report was finalized before lodging this application.

In the intervening period, the deponent swears that she has continued to provide for the said child and frequently makes trips between the United Kingdom and Kenya to visit the said child who, while in Kenya, is in the custody of her niece D.W. N.

In the premise, the applicants seek to regularize their adoption of the said child who, according to them, has been part of their lives since he was two months old.

The application was canvassed before me by Ms Tongoi, Learned counsel for the applicants. Counsel relied on the supporting affidavit aforesaid and elaborated the grounds for the application.

I have considered the application, the supporting affidavit, the annexures thereto and the submissions of Learned counsel. Having done so, I have come to the conclusion that indeed at the time Lady Justice Khaminwa granted the adoption order of 3rd January 2005 which was then issued on 4th November 2005, the record did not contain a home study report from a registered adoption society in Kenya. There was therefore a procedural lapse before the order of adoption was granted. That lapse in my view constitutes an error apparent on the face of the record. In the event, the applicants were entitled to move the court under Order XLIV Rule 1 of the Civil Procedure Rules for a review of the said order.

The applicants have now exhibited "SS 4" which contains a Certificate of Freeing a child for Adoption issued by the Child welfare Society of Kenya, a registered adoption society. That certificate is in respect of the child S.J. T. S and declares the said child free for adoption as required under the provisions of Section 156 of the Children act 2001. The applicants have also exhibited a Home Study Report prepared in respect of the applicants dated 9th September 2008. The report recommends the applicants as suitable to adopt the said child.

There is also exhibited to the said affidavit annexure "SS 3" which is a copy of the International Home Study Report. I have perused the same. The applicants have been assessed and approved as suitable to adopt the said child.

The applicants have now removed the only impediments which stood in their way to the adoption of the said child. Their anxieties should now be put to rest. The applicants' Notice of Motion dated 15th September 2008 is allowed as prayed in paragraph 1 thereof.

I make no order as to costs.

Order accordingly.

DATED AND DELIVERED AT MOMBASA THIS 1ST DAY OF DECEMBER 2008.

F. AZANGALALA

JUDGE

Read in the presence of:

Muinde holding brief for Tongoi for the Applicants.

F. AZANGALALA

JUDGE

1ST DECEMBER 2008