



REPUBLIC OF KENYA

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

Adoption Cause 20 of 2006 (O.S.)

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY M G (A CHILD)

JUDGMENT

By originating summons dated 21.02.06 and filed the same day stated to be under sections 158, 159 and 160 of the Children Act, 2001, section 24 of the Interpretation and General Provisions Act, Cap.2 and section 3A of the Civil Procedure Act, Cap.21, NNJ and AJK of P.O. Box 1698, Machakos applied, *inter alia*, for the following substantive orders, namely:-

- a) That the applicants be authorized to adopt BABY MG
- b) That upon adoption, the child be known as ITJ

At the hearing of the application on 01.12.06, the applicants were represented by learned counsel, Mrs R.W. Mbanya.

Salient facts of the application as gleaned from the pleadings plus supporting affidavit evidence may be summarized as under.

Both applicants are Kenyans of the African race, resident in Kenya. They are husband and wife, respectively, having contracted a statutory marriage under the African Christian Marriage and Divorce Act, Cap.151 at A.I.C. Bomani in Machakos District on 03.08.91. The 1st applicant, NNJ is a Teacher who was working at the Teachers Service Commission at the time of filing these adoption proceedings while the 2nd applicant, AJK is an Accountant who was working at Masaku Teachers SACCO at the time of filing these adoption proceedings.

The applicants have been married for over 15 years, which satisfies the requirement of regulation 19 (d) of the Children (Adoption) Regulations, 2005 that prospective adopters, in the case of joint applicants, should have been married for at least 3 years prior to the date of commencement of adoption arrangements.

The 1st applicant was born on 08.02.67 and is aged around 40 years while the 2nd applicant was born on 22.02.59 and is aged around 48 years. The child to be adopted was born on or about 30.11.03 and is aged around 3 years 4 months. This satisfies the requirements of section 158 (1) (a) of the Children Act to the effect that the applicants or at least one of them should have attained the age of 25 years and be at least 21

years older than the child but should not have attained the age of 65 years.

The child, a Kenyan boy of the African race, was found by a 'good Samaritan' abandoned in a trench at Kawangware, Nairobi and taken to the Police who referred him to Kenyatta National Hospital. On 08.12.03 the child was admitted to the Bernados Home of Kenya Christian Homes which eventually placed him with the applicants on 02.07.04 for fostering. The applicants have been fostering the child since then. The child's biological parents are unknown and they have not laid any claim on him. Kenya Christian Homes have declared the child free for adoption as required by law.

The *guardian ad litem*, SKM has in his report dated 28.08.06 recommended the proposed adoption.

Evidence in the court file shows that the 2nd applicant, AJK earns a salary of Kshs.45,000/= per month while the 1st applicant, NNJ earns a salary of Kshs.39,352 per month. The applicants run a joint account with Standard Chartered Bank which as at March, 2006 had a credit balance of Kshs.119,468/75. The 1st applicant has an account with Barclays Bank which as at March, 2006 had a credit balance of Kshs.199,415/25. The applicants own plots in various places, including a 0.45 hectare plot at Athi River with 30 single rental units standing on it. In short, the applicants are people of sound financial means, capable of taking good care of the subject child.

The Director, Children's Services, in his report dated 27.11.06 has recorded that the applicants have a biological daughter who was in class one in 2006; that the applicants have bonded well with the child to be adopted who has also bonded well with the applicants' daughter. The Director, children's Services has recommended the proposed adoption. I dispense with the biological parents' consent to the proposed adoption as I am authorised by law so to do.

I am satisfied from evidence tendered before court that the applicants meet the legal requirements and social parameters for adoptive parents; that the applicants are fit and proper persons to adopt the subject child; and that it is in the child's best interests to be adopted by the applicants. Accordingly, I make an order under section 154 (1) of the Children Act, 2001 authorising the applicants, NNJ and AJK to adopt BABY MG who shall henceforth be known as ITJ. The Registrar – General is directed to make appropriate entries in the Adopted Children Register as required by law.

Orders accordingly.

Delivered at Nairobi this 28th day of March, 2007.

B.P. KUBO

JUDGE