



## IN THE MATTER OF THE CHILDREN ACT, 2001

AND

## IN THE MATTER OF BABY DG ( A CHILD)

### JUDGMENT

By amended originating summons dated 04.07.06 stated to be brought under sections 154; 156 (1); 157 (1); 158 (1) (a), (4) (a); 159 (4), (6), (7), 8 (a); 160 (1), (2), (4); 162; 163; 164 (1) and 170 of the Children Act, 2001 and section 24 of the Interpretation and General Provisions Act, Cap. 2 Laws of Kenya

TRC, and KHC of P.O. Box *[particulars withheld]*, Nairobi, Kenya, *inter alia*, applied for the following substantive order, namely:-

THAT the applicants be authorized to adopt BABY DG, to be known as DGC.

At the hearing of the adoption application on 09.03.07 the applicants were represented by learned counsel, Mrs. W.W. Muige.

Documents in the court file show that the applicants are American citizens who have been resident in Kenya since April, 2005, i.e. for about 2 years. They are husband and wife, respectively, having got married on 1<sup>st</sup> February, 1980 in Quincy, Massachusetts, United States of America (USA). The 1<sup>st</sup> applicant, JRC was born on 27<sup>th</sup> February, 1959 and is aged around 48 years. The 2<sup>nd</sup> applicant, KPC was born on 18<sup>th</sup> March, 1957 and is aged around 50 years. The child to be adopted was born on 12<sup>th</sup> December, 2004 and is aged around 2 ¼ years. Section 158 (1) (a) of the Children Act is to the effect that for the applicants to qualify as adoptive parents, they 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 statutory age requirements have been met.

The 1<sup>st</sup> applicant works with the Abandoned Baby Centre at Dagoretti in the outskirts of Nairobi as an External Programs Manager with Feed the Children based in Kenya while the 2<sup>nd</sup> applicant is a full time home maker. The applicants have two biological children, JC (boy) born in February, 1983 and KC (girl) born in October, 1987. These children, who are in the USA, have met the child to be adopted twice and are reported to have received the news of his proposed adoption well and are happy with the proposal. The applicants profess the Christian faith and expect to bring up the child in the same faith.

The child to be adopted, a Kenyan boy of the African race, was born on 12<sup>th</sup> December, 2004 and abandoned at *[particulars withheld]* village, Ruiru in the outskirts of Nairobi. He was found by two ladies and taken to Ruiru Police Station which referred him to the Abandoned Baby Centre (ABC). The child was formally committed to the ABC by the Thika Resident Magistrate's Court in January, 2005. On 9<sup>th</sup> February, 2006 the applicants took custody of the child from the ABC and have fostered him since.

The child's biological parents are unknown and have laid no claim on him. I dispense with their consent to his adoption as I am authorized by law so to do.

The applicants came to know the child while he was at the ABC. They took a liking of him and became attached to him. They (applicants) have stated as their reason for the proposed adoption the desire to give him a stable home, education, loving family and provide for his welfare. That is noble.

Kenya's Children's Services Department filed a report on 7<sup>th</sup> March, 2007 which shows that the 1<sup>st</sup> applicant gave his earnings as US \$ 4,200 per month. According to the report of the guardian *ad litem*, Margaret A. Njuki filed on 24<sup>th</sup> January, 2007, however, the 1<sup>st</sup> applicant's salary is shown as US \$ 46,000 per annum, which works out at about US \$ 3,838 per month. There is a discrepancy between the two figures but I consider it as minor. The 1<sup>st</sup> applicant told this court that he and the 2<sup>nd</sup> applicant own a 3 – bed roomed house in the USA which fetches rent of US \$ 750 per month. The total between US\$ 3,838 and US\$ 750 amounts to about US \$ 4,500 per month. If you convert US \$ 4,500 per month at an exchange rate of Kshs. 70/= to the US \$, the 1<sup>st</sup> applicant's earnings come to the equivalent of about Kshs. 315,000 per month. The 1<sup>st</sup> applicant is also reported to be receiving house allowance but this has not been specified. His employer provides the applicants with medical benefits. In short, the 1<sup>st</sup> applicant earns good income to take care of his wife and children comfortably.

Little Angels Network, a registered adoption society in Kenya, has vide its report dated 3<sup>rd</sup> May, 2005 declared the child free for adoption as required by law.

The applicants have appointed Sandra H. Estey, a social worker for the Massachusetts Department of Social Services, of 29 Bromfield Street, Quincy, M A 02170, USA as the child's legal guardian. In Sandra's written undertaking in this regard dated 5<sup>th</sup> April, 2006, she states: ' I hereby confirm that in the event of anything happening to JRC or Karen PHC prior to the 18<sup>th</sup> birthday of DG, I am willing and able to take him into my care and serve as his legal guardian.' This court understands Sandra's undertaking to be that in the event of the applicants' death or other incapacity before the child attains majority age, the said Sandra will assume the role of being his legal guardian and take care of his needs until he attains majority age. The court accepts Sandra's undertaking on that basis.

The guardian *ad litem*, Margaret A. Njuki has recommended the proposed adoption.

Kenya's Director of Children's Services has vide his report dated 5<sup>th</sup> March, 2007 reported that bonding has taken place between the applicants and the child. The Director has recommended the proposed adoption and also recommended that if the court finds in favour of the proposed adoption, the court issues such terms and conditions under section 163 (2) of the Children Act as the court deems fit. In this connection, the Director's report states that Bethany Christian Services, an adoption society in the USA, has undertaken to assist with post-adoption supervision of the applicants and the child when they relocate to the USA. The report adds, however, that Bethany Christian Services is not an adoption society approved to make adoption arrangements in Kenya. Mrs Jacinta Achieng Omondi, Chief Children's Officer at Kenya's Children's Services Department Headquarters, Nairobi who testified before this court on behalf of the Department did, however, say that Bethany Christian Services in the USA is recognized in Kenya. I take Mrs Omondi's evidence to mean that should post-adoption reports be required from the USA if the applicants and the child relocate there, reports from Bethany Christian Services will be acceptable to Kenya's Children's Services Department.

The 1<sup>st</sup> applicant, who gave oral testimony before this court, confirmed that if he and the 2<sup>nd</sup> applicant are authorized to adopt the child, they will give him equal treatment, including inheritance rights, with their biological children.

The court sought to know if racialism is a problem where the applicants come from. The 1<sup>st</sup> applicant said that he and the 2<sup>nd</sup> applicant come from Florida in the USA; that there are occasional incidents of racial discrimination but nothing serious; that where they live in Florida is a place of mixed racial backgrounds, i.e. white and black people and that they do not anticipate serious problems for the child regarding racial discrimination. He added that his State and the USA recognize adoption orders given in Kenya and that he does not envisage any difficulty in the child getting US citizenship if they relocate to

the USA with him. The 1<sup>st</sup> applicant also told the court that his current employment contract with the Abandoned Baby Centre lasts until December, 2007; that he does one year – contract at a time and he expects the present contract to be renewed upon expiry. Eventually, however, the applicants expect to go back to their home country, USA, with the child if the proposed adoption goes through.

The proposed adoption straddles the boundary between local and international adoptions. I shall treat it as an international adoption.

I am satisfied on evidence tendered before court that the applicants qualify as adoptive parents under Kenyan Law; I believe they mean well for the child; that they are fit and proper persons to adopt the child; and that it is in the child's best interests to be adopted by the applicants. Accordingly, I hereby make an International Adoption Order under sections 154 and 162 of the Children Act, 2001 authorising the applicants, JRC and KHC to adopt BABY DG who shall henceforth be known as DGC. The applicants shall notify Kenya's Director of Children's Services at least 3 (three) months prior to relocating to the USA of their intention to so relocate and undertake to cause an American adoption society recognized by Kenya's Director of Children's Services to provide Kenya's Director of Children's Services with post-adoption reports at half-yearly intervals from the date of the applicants' relocation to the USA for 2 (two) years.

The Registrar – General, Kenya is directed to make appropriate entries in the Adopted Children Register as required by law.

I further direct that a copy of this Judgment be served on Kenya's Director of Children's Services for follow – up on the issue of post-adoption reports upon the applicants' relocation with the child to the USA.

Orders accordingly.

**Delivered at Nairobi this 23<sup>rd</sup> day March, 2007.**

**B.P. KUBO**

JUDGE