



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

Adoption Cause 194 of 2005 (0.S.)

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF NA (A CHILD)

JUDGMENT

By originating summons dated 20.12.05 stated to be brought under Order XXXVI of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, Cap.21 and Sections 154 (1) and (2), 156, 157, 158, 159 and 160 of Part XII of the Children Act, No.8 of 2001, SOA and SWO , *inter alia*, applied for the following substantive orders, namely:-

THAT the applicants, SOA and SWO be authorized to adopt NA and, according to their joint statement, the child to be known as NZO.

At the hearing of the adoption application on 09.03.07, the applicants were represented by learned counsel, Mr. T.W. Njuguna.

Documents in the court file establish the following salient facts. The applicants are Kenyans of the African race. They are husband and wife, respectively, having got married on 15.02.97. The 1st applicant, SOA (also known as SMO) was born on 18.02.63 and is aged around 44 years. The 2nd applicant, SWO was born on 23.08.70 and is aged around 37 years. The child to be adopted was born on 18.01.04 and is aged around 3 years. Section 158 (1) (a) of the Children Act, 2001 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 old. The statutory age requirements have been met. Both applicants profess the Christian faith. The 1st applicant is a Banker and Regional Head of Audit for Africa in the Standard Chartered Bank based in Nairobi.

He earns Kshs.1 million per month from his employment and Kshs.300,000/= per month from investments. The 2nd applicant runs a children's hair salon and a ladies boutique in Westlands, Nairobi. The income from her business is about Kshs.150,000/= per month. The applicants have one biological child, a daughter, aged 8½ years old.

The child to be adopted, a Kenyan girl of the African race, is a niece of the 1st applicant, being the only

daughter of his late sister, EA who got the child out of wedlock. The child's biological father is unknown. The child's mother fell sick soon after giving birth to the child prematurely and died on 26.01.04. The child was first taken by the 1st applicant's 5th sister but her financial ability was limited, so she handed the child over to the applicants. This was in February, 2004 after a family meeting which gave blessings to a proposal for the applicants to adopt the child. As the child's biological father is unknown and he has not laid any claim to the child, his consent to the proposed adoption is hereby dispensed with.

Little Angels Network, a registered adoption society in Kenya, has vide its report dated 23.03.06 declared the child free for adoption as required by law.

The guardian *ad litem*, Monica Wambui Mwaura has vide her home report dated 24.08.06 recommended the proposed adoption.

The Director, Children's Services has vide his report dated 06.12.06 recorded that the applicants have bonded well with the child who has also bonded well with the applicants' biological daughter. The Director, Children's Services has recommended the proposed adoption.

The proposed adoption is within extended family circles. The applicants earn very good income. They have fostered the child since the child was about a month old. They have given as their reasons for wanting to adopt the child the desire to formalize the care they have been giving the child from the age of one month. Also that the 1st applicant's employment benefit do not cover this child at the moment and it is the 1st applicant's wish to bring the said child within the ambit of his employment benefits. The report of Director, Children's Services records that the issue of the subject child's rights of inheritance from the applicants was drawn to the applicants' attention and that they indicated they have no problem about conferring the child with inheritance rights once she is adopted by them.

When giving evidence before me on 09.03.07, the 1st applicant testified that Jane Katuga, a sister to the 2nd applicant, had accepted to be the child's legal guardian in the event of the applicants' death or other incapacity before the child attains majority age. I accept the 1st applicant's evidence in this regard.

I am satisfied on evidence tendered before court that the applicants meet the legal requirements and social parameters for adoptive parents; that they 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 hereby make an Order under section 154 (1) of the Children Act, 2001 authorising the applicants, SOA and SWO to adopt NA who shall henceforth be known as NZO. The Registrar – General is directed to make appropriate entries in the Adopted Children Register as required by law.

Orders accordingly.

Delivered at Nairobi this 23rd day of March, 2007.

B.P. KUBO

JUDGE