



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

Adoption Cause 48 of 2006

IN THE MATTER OF BABY WM..... INFANT

AND

DJM.....1ST APPLICANT

CAM.....2ND APPLICANT

JUDGMENT

This is an adoption by foreigners who are, however, resident in Kenya, and have been so for several years now.

They are DJM and his wife CAM, residents of Gigiri within Rosslyn Academy, Nairobi. D is a teacher at Rosslyn Academy. The two are American nationals and are parents to 5 children, two girls and 3 boys.

They applied to court to adopt Baby WM, born on 4.5.2004. Prior to the hearing of the application for adoption, the court appointed a “guardian ad litem” one Monica Wambui Mwaura, who prepared a comprehensive report upon appointment.

Baby W was placed in the custody of the 2 applicants as foster parents on 17th December 2004. Before that, the baby had been found by police, abandoned by the road side in Machakos. He was taken to Machakos hospital for treatment, and later placed under the care of Kyleen Dejong of Scotts Mission Machakos from where the District Children’s office placed the child with the applicants for fostering.

An investigative report was prepared by the Assistant Director for Children’s Services on the applicants and the child. There was also the home-study report prepared by Little Angels Network, who also issued a Certificate “**Declaring the child free for adoption**”.

In court during the hearing, I had occasion to examine both applicants. They first came to Kenya in July 2004. They had discussed the possibility of adopting a child from Kenya as they felt there were many children who needed a family and a home to grow up in.

The applicants confirmed that they love the child, despite already having 5 children of their own. They also confirmed that all the five children plus W are close in age, and this has made it easy for them to bond. Both applicants live in the campus of the Academy and though D teaches, he is able to go to the house several times during his free lessons. In this way, he keeps an eye on Baby W.

C the second applicant also talked fondly about the Baby whom he already referred to as “J”. She is a house wife and spends a lot of time with the baby.

The applicants said they have been praying about this whole procedure of adoption. They hope that their prayer will be granted by the court so that they can have little “J” as their son formally.

Mrs. Madahana, the Children’s Officer addressed the court and referred to documents received from Illinois, USA, in January this year. One was a letter dated 22.1.2007, from the “**Illinois Department of Children and Family Services**”, to “**Kenyan Authorities in Nairobi,**” in respect of Adoption of WM, age 2, by Mr. and Mrs. CA and DJM.

The letter said in part,

“This letter shall serve as a confirmation that if Mr. and Mrs. CA and DJM adopt a child in Kenya, and the adoption is legally finalized in Kenya, that the adoption will be considered valid in Illinois....”.

I have considered the evidence on record in the form of affidavits, the various reports filed and the latest letter from Illinois Department of Children and Family Services.

I have also considered answers to several questions I posed to both the applicants individually. From all this, I have come to the conclusion that the 2 applicants love Baby W, and though “**parents**” to him already, want to be formally endorsed by this court as his adoptive parents.

The two already have children of their own, a total of 5, so I have confidence in their ability to bring up Baby W.

They also have the financial capability to bring up their big family. They impressed me as a steady couple with a good home where Baby W can grow up happily. They already carry themselves as one big family, which is good for this baby!

C, the second applicant did appreciate that “**bringing up J is going to be a challenge when we go back to the States because of his race**”, but as parents, they are prepared for this and will protect him.

This to me is a positive attitude of applicants who are committed to bringing up a child. It is a good thing that Baby W will be protected when the family go back to the State of Illinois USA, which has confirmed that they will recognize the “**lawful adoption**” of Baby W conducted in Kenya.

Under normal circumstances the court would demand consent of the biological parents of a child before adoption. But in this case, the court will dispense with such consent because the Baby was abandoned as shown by evidence in the court file.

Besides, the Baby has since been declared “**free for adoption**”.

From the above evidence, I am satisfied that the proposed adoption herein will be good for this Baby, so I authorize DJM and CAM to adopt Baby WM, who from this date henceforth will be known as **JBM**.

I direct that a birth certificate be issued to JBM, and further, that necessary travel documents be issued to him, as and when the parents want to travel with him out of this country.

Dated at Nairobi this 19th day of March, 2007.

JOYCE ALUOCH

JUDGE