



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MILIMANI LAW COURT
ADOPTION CAUSE 76 OF 2006
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY RM alias CM (A CHILD)
JUDGMENT

By originating summons dated 2nd June, 2006 and filed the same day, stated to be brought under sections 154; 156 (1); 158 (1) (a), (4) (a); 159 (1) (a) (i), (6), (7); 160 (1), (2), (4); 163; 164 (1) and 170 of the Children Act, No.8 of 2001 and section 24 of the Interpretation and General Provisions Act, Cap. 2 Laws of Kenya

and RMM of P.O. Box 53635, Nairobi, *inter alia*, applied for the following substantive order, namely:-

THAT the applicants be authorized to adopt BABY RM alias CM to be known as KM.

The application is supported by the applicants' joint statement dated 22.05.06 and affidavit sworn on 22.05.06 to the effect that what appears in the statement is true.

Hearing of the application took place before me on 23.03.07 whereat the applicants were represented by learned counsel, Miss L.W. Kigwatha.

The applicants are American citizens. They are husband and wife, respectively, having got married to each other on 1st July, 1989, i.e. some 17 years ago, in Midland, Michigan, United States of America. The provisions of regulation 19 (d) of the Children (Adoption) Regulations, 2005 which require joint applicants to have been married for at least 3 years prior to the date of commencement of adoption arrangements have been complied with.

The 1st applicant, DJM was born on 4th November, 1958 and is aged around 49 years while the 2nd applicant, RMM was born on 4th December, 1961 and is aged around 46 years. The child to be adopted was born on 11th November, 2004 and is aged around 2 ¼ years. The provisions of section 158 (1) (a) of the Children Act, 2001 requiring that at least one of the applicants should have attained the age of 25 years and be at least 21 years older than the child but not to have attained the age of 65 years have been complied with.

The applicants have lived and worked in Kenya for the last 4 years. The 1st applicant is a High School Principal at Rosslyn Academy, Nairobi while the 2nd applicant is a Teacher there. They have been in

Kenya on 2 – year contracts and plan to be in Kenya ‘for quite some time’ as their children are in school here. The applicant’s current contracts which expire in June, 2007 have been extended up to June, 2009. Both applicants are Christian Missionaries and intend to bring up the child in question in the Christian faith.

Little Angels Network, a registered adoption society in Kenya, filed a report dated 31st May, 2006 on 21st June, 2006 which records that the child, a Kenyan girl, was abandoned at her place of birth at Kenyatta National Hospital by her mother, RM on 16th November, 2006 and that no biological parent has claimed the said child. Little Angels Network has declared the child free for adoption.

In a report dated 5th February, 2007 and filed on 7th March, 2007 Kenya’s Director of Children’s Services has recorded that the child in question has bonded well with the applicants. The applicants have two biological children of their own, i.e. RJ aged 15 years and BJ aged 13 years. The applicants also already have an adopted child, HM aged 9 years whom they adopted in Bolivia, South America. The child now sought to be adopted is reported to have bonded well with the applicants’ biological children and with the applicants’ already adopted child. Kenya’s Director of Children’s Services recommends the proposed adoption.

There are also favourable reports by the guardian *ad litem*, JWN, an Advocate of the High Court of Kenya who has known the applicants since 2005 through Christian fellowship with them at Nairobi Chapel.

The 1st applicant earns a net monthly salary of Kshs.92,775/= while the 2nd applicant earns a monthly net salary of Kshs.67,360/=. The applicants have had care and custody of the child in question since 27th January, 2006 having taken custody of her from New Life Trust Home which has no objection to the proposed adoption. As the child’s biological parents have not laid any claim to the child, their consent to the proposed adoption is hereby dispensed with.

The 1st applicant’s sister, MJ has consented to be the child’s legal guardian in the event of the applicants’ death or other incapacity before the child attains majority age.

Bethany Christian Services, an adoption society in the United States of America, (USA) has given an undertaking to assist in post-adoption supervision of the applicants and the child when they relocate to America. The 2nd applicant deposed in her further affidavit sworn on 19th January, 2007 that both she and the 1st applicant have approval from the US Department of Homeland Security to apply for the child to travel to the US as a lawful permanent resident and to apply for her citizenship should the applicants return to the USA.

Kenya’s Director of Children’s Services has proposed that if the court authorizes the proposed adoption, the court issues such terms and conditions under section 163 (2) of the Children Act as it deems fit.

I am satisfied on evidence tendered before court that the applicants are fit and proper persons to adopt the child; that they have reasonable means to take care of the child; and that it is in the child’s best interests to be adopted by the applicants. The application straddles the boundary between a local adoption and an international adoption. Accordingly, I hereby make an International Adoption Order under sections 154 and 162 of the Children Act, 2001 authorising the applicants, DJM to adopt BABY RM alias CM who shall henceforth be known as KM. The applicants shall notify Kenya’s Director of Children’s Services at least 3 (three) months prior to relocating to the United States of America (USA) of their intention to so relocate and to cause Bethany Christian Services in the USA to provide Kenya’s Director of Children’s Services with post – adoption reports at half – yearly intervals from the date of the applicant’s 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 27th day of April 2007.

B.P. KUBO

JUDGE