



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

Adoption Cause 166 of 2004

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF VM (A CHILD)

JUDGMENT

By originating summons dated 26.08.04 and filed on 26.08.04 stated to be brought under sections 154 and 158 of the Children Act, 2001, AON and EAO of P.O. Box [particulars withheld, Nairobi – 00300, *inter alia*, applied for the following substantive order, namely:-

THAT the applicants be authorized to adopt VOO

At the hearing of the application on 27.04.07, the applicants were represented by learned counsel, Mrs L. Gitaka.

Salient facts of the application may be summarized as under.

The applicants are Kenyans of the African race. They are husband and wife, respectively, having initially married each other under Luo customary law in January, 1998 and subsequently formalized their marriage on 12.05.05 at the Registrar's Office, Nairobi under the Marriage Act, Cap. 150. They filed an affidavit testifying to their customary marriage in January, 1998 and also filed a photocopy of their 2005 statutory marriage certificate. Regulation 19 (d) of the Children (Adoption) Regulations, 2005 (Legal Notice No.43 of 2005) provides that 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. As the applicants' marriage dates back to January, 1998, i.e. some 9 years back, the requirements of this regulation have been complied with.

This 1st applicant, AON was born in 1969 and is aged around 38 years. The 2nd applicant, EAO was born on 18.12.68 and is aged around 39 years. The child to be adopted was born on 27.05.01 and is aged around 6 years. Section 158 (1) (a) of the Children Act is to the effect that for the applicants to qualify as adoptive parents, 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. These statutory age requirements have been met.

The child to be adopted, a Kenyan girl of the African race, was born on 27.05.01 at M[*particulars withheld*]General Hospital and abandoned at the nursery there on 30.06.01. On 04.12.01 she was by order of the Resident Magistrates Juvenile Court, Machakos committed to Rehema PEFA Home for care and protection. The applicants took custody of the child for foster care on 29.03.03 and have fostered the child ever since.

Applicants' counsel, quite properly, drew the Court's attention to a discrepancy in the child's name, i.e. that the child was referred to the Home as Baby NM while in the child's birth certificate, when it was eventually received by the Home, she was referred to as VMN. EWM, social worker with Rehema PEFA Children's Home who was involved in investigations regarding the child's adoption testified before this Court and confirmed that the child committed to that Home under the name of Baby NM is one and the same child whose names appears in the child's birth certificate as VMN. The name N is common in the committal documents from Juvenile Court and in the birth certificate later received relating to the child. I am satisfied that the names 'Baby NM' and 'VMN' refer to one and the same child subject matter of the present adoption application. No biological parent or relative has laid any claim to the child. Rehema PEFA Children's Home released the child to the applicants for foster care on 29.03.03 and the child has been in the applicants' foster care ever since. Rehema PEFA Children's Home has no objection to the proposed adoption. As the child's biological parents have laid no claim to the child, I dispense with their consent to the proposed adoption.

The applicants have a tailoring business stall at K[*particulars withheld*] Market in Nairobi which generates income averaging kshs.30,000 per

month. They also get some income from their farm in Migori District, Nyanza Province. Additionally, the 1st applicant got employment in June, 2006 at A[particulars withheld] Restaurant, Nairobi from which he earns Kshs.8,000/= per month. The applicants got a biological child together in 1994 but she passed away after a short illness. The 2nd applicant subsequently developed medical complications which made the getting of other children seem an unviable option. The applicants have, therefore, opted to attain parenthood via the adoption route, hence the present application.

The child Welfare society of Kenya

gistered adoption society in Kenya, has declared the child in question free for adoption as required by law.

The guardian *ad litem*, GWK has recommended the proposed adoption.

The Director, Children's Services has reported that bonding has taken place between the applicants and the child and the Director recommends the proposed adoption.

The applicants get reasonable income to enable them to cater for the needs of the child to be adopted. The child was abandoned at birth and is in need of a stable home environment to grow up in. The applicants have fostered the child since 29.03.03 and have bonded with the child.

I am satisfied on 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 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's Act, 2001 authorising the applicants, AON and EAOTO to adopt the child, VMN who shall henceforth be known as VOO.

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

Orders accordingly.

Delivered at Nairobi this 11th day of May, 2007.

B.P. KUBO

JUDGE