



IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF YA (A CHILD)

JUDGMENT

By originating summons dated 22nd September, 2006 and filed on 28th September, 2006 stated to be brought under sections 154; 156; 158 (1) (a), (4) (e); 159 (1), (7); 160; 163 (1); 164 and 170 of the Children Act, 2001 and section 22 of the Interpretation and General provisions Act, Cap.2, PJS and SMP of residence No.7 Pearl Homes, East Church Road, Westlands, Nairobi, *inter alia*, applied for the following substantive order, namely:-

THAT the applicants PJS and SMP be authorized to adopt YA, to be known as MBSP

The applicants were represented at the hearing of their application by learned counsel, Mr. J. Mwenda.

Salient facts pertaining to the application may be summarized as under.

The applicants are Canadian nationals working as 'Legal Resettlement Experts' with the United Nations High Commissioner for Refugees in Nairobi. Both have lived and worked in Kenya on annual contracts since the year 2003 and their current contracts expire in December, 2007. They expect the contracts to be renewed.

The applicants are husband and wife, respectively, having got married to each other on 10th May, 1998, i.e. some years ago, at Tofino in British Columbia, Canada. They have not been able to get biological children owing to biological /medical complications on the part of the 2nd applicant and they decided to attain parenthood via the adoption route. Currently they already have an adopted child, a Kenyan girl aged 3 years and 2 months adopted here in Kenya in 2005 and doing well under the applicants' upbringing. That adopted child is now a Canadian citizen and holds a Canadian Passport. Regulation 19 (d) of Kenya

ldren (Adoption) Regulations, 2005 (Legal Notice No.43 of 2005) requires adopters, in the case of joint applicants, to have been married for at least 3 years prior to the date of commencement of adoption arrangements. This requirement has been met.

The 1st applicant was born on 18th June, 1962 and is aged around 45 years while the 2nd applicant was born on 5th September, 1960 and is aged around 47 years. The child to be adopted was born on 19th November, 2005 and is aged around 1 year and 4 months. Section 158 (1) (a) of Kenya's Children Act, 2001 is to the effect that for joint 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 complied with.

The child now sought to be adopted, a Kenyan girl of the African race, was found abandoned soon after birth on 19th November, 2005 at Bahati Shopping Centre, Nairobi. She was rescued by a 'Good

Samaritan' who took her to Shauri Moyo Police Station, Nairobi where she was booked in under the name of Baby Police Shauri Moyo for ease of identification. She was transferred the same day to Pumwani Maternity Hospital, Nairobi where she was admitted.

On 22nd December, 2005 the Nairobi Provincial Children's Officer referred the child to the Abandoned Baby Centre, Nairobi for care and protection pending further orders by court, which orders were subsequently given. An affidavit sworn by one Vincent Opiyo on 6th March, 2007 is to the effect that upon admission to the Centre, the child was re-named YA to make reference easy and convenient. This is the name the child has since been known by. The child was handed over by the Abandoned Baby Centre to the applicants on 12th May, 2006 for foster care and has remained with the applicants ever since. The Centre has no objection to the applicants adopting the child.

The applicants swore a joint affidavit on 27th September, 2006 in which they, *inter alia*, gave their combined income as being substantively in excess of Kshs.500,000/= per month. One of the annexures to the applicants' affidavit is a 2006 Property Assessment report (Annexure 'G 1') which is to the effect that the 1st applicant has landed property to Vancouver, Canada valued at Canadian \$ 374,400, which translates to approximately Ksh.22.4 Million, at an exchange of Kshs.60/= to the Canadian \$.

JS, a sister of the 1st applicant of Hamden CT, U.S.A did vide her letter dated 12th April, 2006 give her consent to be the child's guardian in the event of the applicants' death. This Court emphasizes that if the proposed adoption is authorized, JS guardianship shall be premised not only on the applicants' death but also on their other incapacity before the child attains majority age, and JS offer to be such guardian is accepted on that basis.

Little Angels Network, a registered adoption society in Kenya, has declared the child in question free for adoption as required by law.

The child's *guardian ad litem*, MM has recommended the proposed adoption.

A report dated 2nd January, 2007 and filed on 7th March, 2007 by Kenya's Children's Department Headquarters, Nairobi records that the child has bonded well with the applicants and also with the already adopted child, Aisha.

The applicants swore a further affidavit on 6th March, 2007 to which they annexed a photocopy letter dated November 13, 2006 from British Columbia and certified by the Canadian High Commission in Nairobi confirming as follows:

'...Once an adoption is legally finalized in Kenya, the British Columbia legislation would recognize the child as a full member of the adoptive family if Peter Stockholder and Susan Prosser should move to British Columbia, and as such should be treated in the same manner as all other children of the legally constituted families.'

The applicants have ample means to comfortably cater for all the needs of the child sought to be adopted and they have indicated their willingness to so cater for the child, which I accept.

As the applicants biological parents are unknown and have not laid any claim to the child, their consent to the proposed adoption is hereby dispensed with.

I am satisfied on evidence tendered before this Court that the applicants mean well for the child in question; 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 make an international adoption order under section 162 of the Children Act, 2001 authorising the applicants, PJS and SMP to adopt YA who shall henceforth be known as MBSP.

The Register-General, Kenya is directed to make appropriate entries in the Adopted Children Register

as register as required by law.

Orders accordingly.

Delivered at Nairobi this 3rd day of May, 2007.

B.P. KUBO

JUDGE