



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Adoption Cause 114 of 2006**  
**IN THE MATTER OF THE CHILDREN ACT, 2001**  
**AND**  
**IN THER MATTER OF BABY D (A CHILD)**  
**JUDGMENT**

By originating summons dated 10<sup>th</sup> August, 2006 stated to be brought under sections 154; 156 (1); 157 (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 JKE of P.O. Box [particulars withheld], Nairobi applied, *inter alia*, for the following substantive order, namely:-

THAT the applicants be authorized to adopt BABY D, to be known as JKAE At the hearing of the application on 18<sup>th</sup> May, 2007 the applicants were represented by learned counsel, Miss L.W. Kigwatha.

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

The applicants are Canadian citizens who have lived in Kenya since July, 2004. The 1<sup>st</sup> applicant, WJE is a teacher at Rosslyn Academy, Nairobi while the 2<sup>nd</sup> applicant is a full-time homemaker. The two are husband and wife, respectively, having got married to each other on 5<sup>th</sup> June, 1993 at Dalmeny Community Church, Saskatchewan and have remained so married for approximately the last 14 years. Regulation 19 (d) of the Children (Adoption) Regulations, 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. This requirement has been met.

The 1<sup>st</sup> applicant was born on 22<sup>nd</sup> May, 1972 and is aged about 35 years. The 2<sup>nd</sup> applicant was born on 19<sup>th</sup> July, 1970 and is aged around 37 years. The child to be adopted was born on 1<sup>st</sup> November, 2005 and is aged about 1 year and 7 months. Section 158 (1) (a) of the Children Act 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. These statutory age requirements have been met.

The child to be adopted, an African girl, was found by security guards at Kenyatta National Hospital Occupational Therapy Department, Nairobi on 16<sup>th</sup> November, 2005. She was rescued and the matter

reported to police. She was admitted at the hospital until 8<sup>th</sup> December, 2005 when, not having been claimed, she was taken to Nest Children's Home in Limuru for further management. She stayed there until 9<sup>th</sup> March, 2006 when she was placed under the applicants' care and control and the applicants have fostered the child ever since. The child's biological parents are unknown. The applicants have two biological children, both boys. These are: Ezra, born on 30<sup>th</sup> December, 1998 now aged about 8½ years and Isaiah, born on 24<sup>th</sup> January, 2001 now aged about 6 years 5 months. The applicants, who are Christians have indicated that they saw the child to be adopted and loved her and decided to make her part of their family. Reports filed in court indicate that the child to be adopted has bonded with the applicants as well as with their two biological children.

The 1<sup>st</sup> applicant earns a net salary of Kshs.90,127/= per month. His employer remits Canadian Dollars 1000 per quarter to his (1<sup>st</sup> applicant's) savings account as retirement benefits. Additionally, the applicant's employer provides him with other benefits including healthcare, insurance, school fees and housing.

A testimonial dated 25<sup>th</sup> May, 2006 by the Canadian High Commission in Nairobi notifies that under Canadian Laws, children adopted outside Canada can apply to go to Canada as part of the regular family immigration programme and that this process is equally available to Canadian citizens returning to reside in Canada with children they have adopted while living abroad. The 1<sup>st</sup> applicant told this court that his current 3 – year contract ends on 30<sup>th</sup> June, 2007; that he has been offered a further 2 – year contract after the current contract ends; and that in his understanding, there will be no difficulty in obtaining Canadian citizenship for the subject child once adopted. A letter dated 16<sup>th</sup> May, 2006 from the Acting Executive Director, Manitoba Family Services and Housing in Canada states that the Province of Manitoba can recognize an adoption effected according to the law of another jurisdiction.

Vide paragraph 12 of their statement dated 10<sup>th</sup> August, 2006 in support of the adoption application, the applicants stated that they have appointed KAF and SLF as legal guardians of all their (applicants') children in the event of the applicants' death or other incapacity before the children attain majority age. This arrangement should also cover the child to be adopted if the proposed adoption goes through.

The applicants told the representative of Kenya's Children's Department who interviewed them that they have no objection to the child to be adopted also inheriting their property and that they have endeavoured to include her in their Will.

Kenya Christian Homes, a registered adoption society in Kenya, has declared the child free for adoption.

The guardian *ad litem*, Beverley Nuthu has vide her report dated 13<sup>th</sup> November, 2006 recommended the proposed adoption as being in the child's best interests.

Kenya's Director of Children's Services has vide his report dated 16<sup>th</sup> April, 2007 confirmed that the child to be adopted has bonded well with the applicants and their two biological children and he (Director) has recommended the proposed adoption and asked the court to attach such conditions as it may deem fit. In the latter regard, the Director availed to this court a photocopy of letter dated 21<sup>st</sup> December, 2006 addressed to him by CAFAC Inter-Country Adoption Agency of Box 1587, Minnedosa, Manitoba, Canada, ROJ 1EO to the effect that the said agency is prepared to furnish the Director with post-adoption reports on the progress of the child if placed with the applicants and they relocate with her to Canada.

I am satisfied on evidence tendered before this court that the applicants meet requisite requirements for adoptive parents; I believe that the applicants mean well for the subject child; I am satisfied that the applicants have the necessary financial means as well as good will to cater for the child's needs adequately; and that it is in the child's best interests to be adopted by the applicants. As the child's biological parents are unknown, their consent to the proposed adoption is dispensed with. The proposed

adoption straddles the boundary between a local adoption and an international adoption but I shall treat it as a local adoption as the applicants have been resident in Kenya since 2004 and are here for at least the next two years. Accordingly, I hereby make an order under section 154 (1) of the Children Act, 2001 authorising the applicants WJE and JKE to adopt the child, BABY D who shall henceforth be known as JKAE

As the applicants expect eventually to relocate to Canada, they shall notify Kenya's Director of Children's Services at least 3 months prior to relocating to Canada of their intention to so relocate and shall cause CAFAC Inter-Country Adoption Agency of Canada to provide Kenya's Director of Children's Services with post-adoption reports at half yearly intervals for two years starting from six months after the applicants' relocation with the child to Canada.

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 purposes of follow-up on the issue of post-adoption reports upon the applicants' relocation with the adopted child to Canada.

Orders accordingly.

**Delivered at Nairobi this 29<sup>th</sup> day of June, 2007.**

**B.P. KUBO**

JUDGE