



IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF LM (A CHILD)

JUDGMENT

By originating summons dated 27.02.03 and filed on 28.02.03 stated to be brought under sections 154, 156, 157, 158 and 159 of the Children Act, 2001, AO and VDEO of Post Office Box Number [PARTICULARS WITHHELD], Nairobi applied, *inter alia*, for the following substantive order, namely:-

THAT the applicants be authorized to adopt the child, L M.

Paragraph 18 of the applicants' statement also of 27.02.03 in support of the application indicates that if the adoption is authorized, the child is to be known as SIAOO.

The applicants were represented at the hearing of the application on 20.07.07 by learned counsel, Miss M. Sande.

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

The applicants are husband and wife, respectively, having got married on 03.01.76 in Toronto Canada and have remained so married for the last 31 years. The 1st applicant is a Kenyan by birth while the 2nd applicant is Jamaican by birth and is now a Kenyan. Both applicants are of the African race. 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 immediately prior to commencement of adoption arrangements. The regulation has been complied with.

The 1st applicant, AO was born on 02.11.37 and is aged about 69 and 8 months. The 2nd applicant, VDEO was born on 14.09.50 and is now aged about 46 years and 10 months. The child to be adopted was born on 30.03.2000 and is aged around 7 years and 4 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. The 1st applicant does not qualify as he is over 65 years of age but the 2nd applicant qualifies as she is below age 65. On account of the 2nd applicant meeting the stipulated age requirements, the statutory age requirements have been met.

The applicants have 3 biological children, all girls, reported in the report of the Director of Children's Services dated 20.10.03 to have been aged as follows: S aged 22 years, S2 aged 21 years and T aged 16 years. The applicants also have an adopted daughter, T stated in the same report to have been aged 5 years. It is also stated in the Director's report that the applicants, who have adopted a child before from New Life Home, did not thereafter initially have any intention of adopting another child. However, in the process of adopting T, the applicants established rapport with New Life Home and became quite involved in the goings – on at the Home. During one visit they chanced upon the child (a boy) they now want to adopt, they 'fell in love with him' and changed their minds in favour of undertaking another adoption as they felt they could not bear to leave him in the institution, hence the present application. The report of the Director of Children's Services dated 02.10.03 alluded to above records that the 1st applicant told the Director's representative that he (1st applicant), an advocate, was in private legal practice in the firm of R & Company Advocates where he was a partner. The 2nd applicant who testified before me on 20.07.07 told the Court that the 1st applicant earns about US\$ 3,000 per month. This works out at the equivalent of approximately Kshs.201,000 per month at an average exchange rate of Kshs.67/= to the dollar. The 2nd applicant, a teacher, is currently a full time housewife. The Director's report, additionally records that the Director's representatives visit to the applicants' home in Valley Arcade, Nairobi took the said representative to a 'beautiful (home) to behold – perfectly landscaped, tastefully furnished ... with all the necessary space and provisions' and that the home is fully owned by the applicants.

The adoption application was filed on 28.02.03 but for reasons which need not detain this court, it was not pursued to its logical conclusion. This time round, the applicants revived the application and came under certificate of urgency on the basis that they and the child are required to travel to Jamaica urgently as the 2nd applicant needs to attend to her sick mother. The applicants' attempt to get a Passport for the child could not succeed unless they produce a Court Order authorizing them to adopt the subject child. It is the applicants' case that they cannot leave the child, whom they have fostered since 03.08.2000, as, in the words of the 2nd applicant at paragraph 10 of her affidavit sworn on 10.07.07, that 'is likely to cause him grievous emotional harm as he will feel that he is separated from me and hence not part of the

family.’ The 2nd applicant also deposed at paragraph 6 of the same affidavit that she is committed to the child and that she and the child have strong attachment to one another.

The child to be adopted, a Kenyan boy of the African race, was rescued from a pit latrine in Kikuyu by a police officer. Thereafter the child was taken to Kenyatta National Hospital and subsequently placed with New Life Home from where the applicants later took him on 03.08.2000 and they have had him under their custody and foster care ever since.

Little Angels Network, a registered adoption society in Kenya, has vide its report signed on 08.02.06 declared the child free for adoption.

The guardian *ad litem*, A.D.O.R filed his report dated 16.12.03 on 19.12.03. In it he said the child had bonded well with the applicants and he recommended the proposed adoption.

In his report dated 02.10.03, the Director, Children’s Services, who records that the subject child is doing very well with the applicants, prefaced his recommendation of the proposed adoption in the following terms:

‘The child in this matter had such a rude start in life literally emerging from the pits! He deserves so much better ... and protection The applicants are ready and willing to do just that They are raising their own natural children and an adopted child. To all intents and purposes these are thriving. They (applicants) are mature and responsible people who are only too aware of what this commitment entails, have done it before and are ready to do it yet again. Without the applicants, the child has no one in his life! It is therefore recommended that LM be adopted by Mr. and Mrs A who propose to call him SIAOO.’

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. As the child’s biological parents are unknown, I dispense with their consent to the child’s proposed adoption. Accordingly, I hereby make an Adoption Order under section 154 (1) of the Children Act, 2001 authorising the applicants, AO and VDE O adopt the child, LM who shall henceforth be known as SIAOO.

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

Orders accordingly.

Delivered at Nairobi this 23rd day of July, 2007.

B.P. KUBO

JUDGE