



REPUBLIC OF KENYA

HIGH COURT OF AT NAIROBI (MILIMANI LAW COURTS)

Adoption Case 64 of 2007

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF DN (A CHILD)

JUDGMENT

By originating summons dated 12.04.07 and filed on 10.05.07 stated to be brought under sections 154; 156(1); 157(1); 158(1) (a), (4) (a); 159 (4), (6), (7), 8(a); 160(1), (2), (4); 162; 163; 164(1); 169 and 170 of the Children Act, 2001 and section 24 of the Interpretation and General Provisions Act, Cap. 2 Laws of Kenya

ALH – B and KB of [particulars withheld], Germany applied, *inter alia*, for the following substantive order, namely:-

THAT M LH-B and KB be authorized to adopt the child DN.

The applicants did not specify in their application whether the child was to retain the name DN or be known by another name if the adoption was authorized. However, according to the report of Kenya's Director of Children's Services dated 11th June, 2007 they told the representative of the Director who compiled the report that they (applicants) proposed to name the child as DNGB. The 1st applicant confirmed to the court that indeed they (applicants) would like the child to be known by the name DNGB if the adoption is authorised. At the hearing of the application on 6th July, 2007 the applicants were represented by learned counsel, Mr E.O. Ogonji.

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

The applicants are German nationals. They are wife and husband, respectively, having got married to each other on 24th October, 2003 at Karlsdorf – Neuthard in Germany and have remained so married for about 3 years and 8 months. 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. The child to be adopted was placed in the foster care of the applicants on 15th December, 2006, i.e. over 3 years after the applicants got married, pending the proposed adoption. The requirements of regulation 19 (d) have been complied with.

The 1st applicant, M L H - B was born on 8th December, 1958 and is aged around 48 years. The 2nd applicant, KHB was born on 23rd February, 1952 and is aged around 55 years. The child to be adopted, a Kenyan girl of the African race, was born on 18th May, 2005 and is aged about 2 years and 2 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 1st applicant is a headmistress of a school for handicapped children in Germany. While she indicated her income to the guardian *ad litem*, M M as Euros 3,500 per month gross, she indicated her earnings simply as Euros 2,400 per month to the representative of the Director of Children's Services who interviewed her. I assume the latter figure of Euros, 2,400 to represent her net earnings, which work out at the equivalent of Kshs.216,000/= per month at an average exchange rate of Kshs.90/= to the Euro. The 2nd applicant heads a school in Germany which educates people to teach in orphanages. While 2nd applicant indicated his income as Euros 5,889 per month gross to the guardian *ad litem*, he indicated his earnings simply as Euros 4,000 per month gross to the representative of the Director of Children's Services who interviewed him. Here also I assume the figure of Euros 4,000 to represent his net earnings per month, which works out at the equivalent of Kshs.360,000/= per month. The applicants have a 4 - bedroom house in Germany. The 1st applicant's mother also has a house in Germany and the 1st applicant is the only child. Additionally the 2nd applicant's employer provides him with benefits for the family including

healthcare and school fees. Asked by the court about inheritance rights for the child to be adopted, both applicants said the child will enjoy inheritance rights. The applicants also said they have appointed their family friends, Mr H F H and his wife Mrs JARU – H, also of Germany to act as the child’s legal guardians in the event of their (applicants’) death or other incapacity before the child attains majority age.

The child to be adopted, DN was born out of an incestuous relationship between her 17 year old mother, MA and her cousin. Such child is considered a taboo child in the community into which the child was born and she was given away for adoption. Documents in the court file indicate that some doubts have been expressed about the validity of the consent given to the child’s adoption. But the fact of the matter is that the child’s biological parents have had nothing to do with the child since the child’s birth as she is considered a taboo child. For that reason, even the parents’ relatives will have nothing to do with the child.

Little Angels Network, a registered adoption society in Kenya, has declared the child free for adoption.

The guardian *ad litem*, M M, a Kenyan, recommends the proposed adoption.

The applicants were assessed by Help a Child Adoption Society in Germany and found suitable as adoptive parents.

For the 1st applicant, her marriage to the 2nd applicant is her first marriage while for the 2nd applicant this marriage is his second marriage, his first marriage having ended in divorce. He got two male children with his first wife and those children are now grown up. The report of Kenya’s Director of Children’s Services dated 11th June, 2007 records that the first applicant told the representative of the Director that when she got married to the 2nd applicant, his children from his first marriage were teenagers and did not welcome her easily; that she had to take a lot of time in order for them to accept her as a mother; and that taking care of the two boys took a lot of time and was involving; and that the environment was therefore not good for her and the 2nd applicant to raise an infant. When asked by this court why she has no biological children, the 1st applicant repeated that her marriage to the 2nd applicant is her first marriage; that she and the 2nd applicant married when not so young; that it is difficult to have children at such advanced age; that the two of them nevertheless desire to have a child together and have therefore decided to adopt the subject child.

Kenya’s Director of Children’s Services reports that bonding has taken place between the child and the applicants. The 2nd applicant has two grown-up male children from a previous marriage who are reported to welcome the proposed adoption as they look forward to having a sister. The Director recommends the proposed adoption and also recommends that if the adoption is authorized, it be on condition that the applicants furnish this court and Kenya’s Director of Children’s services with post-adoption periodic reports for 2 years, at quarterly intervals. The applicants confirmed to this court that they have no problem in causing post-adoption reports to be furnished and that they would be furnished by Help a Child Adoption Society in Germany. The reports would be compiled by the State Office for Youth Affairs and handed over to Help a Child Adoption Society in Germany for onward transmission to the requisite Kenyan authorities.

The guardian *ad litem*’s report dated 30th May, 2007 records that the applicants, who are Christians, share joint responsibility for and years of commitment to [*particulars withheld*], a community based feeding and education programme they established at Kisumu, Kenya in 2003. They visit Kenya for a minimum of one month every year to inspect that programme.

I believe the applicants mean well for the subject child and I am satisfied on evidence tendered before court that the applicants meet the legal requirements for adoptive parents; that the applicants are fit and proper persons to adopt the child; that the applicants have the necessary financial means to cater for the child’s needs; and that it is in the child’s best interests to be adopted by the applicants. As the child is technically an abandoned child, I dispense with her biological parents’ consent to the proposed adoption. Accordingly, I hereby make an International Adoption Order under section 162 of the Children Act, 2001 authorising the applicants, MLH – B and K B to adopt the child, D N who shall henceforth be known as DNGB.

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

I also direct that the applicants shall cause Help a Child Adoption Society in Germany to furnish Kenya’s Director of Children’s Services with post – adoption reports on the applicants and the child for 2 years beginning from the end of October, 2007 and thereafter at quarterly intervals.

I further direct that a copy of this Judgment be served upon Kenya’s Director of Children’s Services for purposes of follow-up on the issue of post-adoption reports.

Orders accordingly.

Delivered at Nairobi this 13th day of July, 2007.

B.P. KUBO

JUDGE