



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Adoption Cause 135 of 2007 (OS)
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF C N alias M N alias D A E (A CHILD)
CONSOLIDATED WITH
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF OTHIENO M O alias M O E (A CHILD)
JUDGMENT

(Particulars withheld pursuant to section 76(5) of the Children Act, 2001)

By originating summons dated 15.08.07 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), (3), (4); 162; 163; 164 (1) and 170 of the Children Act, 2001 (No.8 of 2001) and sections 22 plus 24 of the Interpretation and General Provisions Act, Cap.2, J A A and C O A of care of [particulars withheld], USA applied vide Adoption Cause No.135 of 2007, *inter alia*, for the following orders, namely:-

That the applicants be authorized to adopt C N alias M N alias D A E, to be known as DAE.

By identical summons also dated 15.08.07 stated to be brought under the same legal provisions as above, the same applicants, JAA and COA of the same address applied vide Adoption Cause No.136 of 2007, *inter alia*, for the following orders, namely:-

That the applicants be authorized to adopt OMO alias MOE, to be known as MOE.

The applicants were represented in both adoption causes by the firm of Musyimi & Company Advocates.

The causes were consolidated on 17.08.07. At the hearing of the substantive application on 12.11.07, learned counsel, Mrs Nyambura Musyimi appeared for the applicants.

Salient facts pertaining to the adoption applications may be summarized as under. The applicants are

of Kenyan extraction and origin now residing and working in Alabama County, United States of America (USA). They are wife and husband, respectively, having got married to each other on 17.11.79, i.e. they have been married for about 28 years. Regulation 19 (d) of the Children (Adoption) Regulations, 2001, being Legal Notice No.43 of 2001, is to the effect that for joint applicants to qualify as adoptive parents, they should be married for at least 3 years prior to the date of commencement of adoption arrangements. This requirement has been met.

The 1st applicant, JAA was born on 18.01.53 and is aged around 54 years. The 2nd applicant, COA was born on 04.11.49 and is aged around 58 years. The child in Adoption Cause No.135 of 2007, C N, a girl, was born in 1999. The child in Adoption Cause No.136 of 2007, O M O, a boy, was born in 1994. 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 in each case but should not have attained the age of 65 years. These statutory age requirements have been met.

Relevant circumstances surrounding the children to be adopted are briefly as follows:-

a) Child in Adoption Cause No.135 of 2007, C N alias MN alias DAE.

This child, a Kenyan girl, was born in 1999 by an 18 - year old single mother in Nairobi and abandoned there by the biological mother who has not resurfaced to lay claim to the child and nobody else has laid any claim to the child. The abandonment of the child was reported to the Police for necessary action. On 27.12.99 the child was referred to New Life Home Trust for care and protection and she remained there until 03.02.2000 when she was taken over by one Miss I A O for foster care. Documents in the court file establish that it was IAO's intention eventually to adopt this child. However, IAO died on 22.07.07 before formally adopting the child. The 1st applicant, a first cousin and childhood friend of the late I A O took over the sole responsibility of caring for the child since IAO's death in accordance with the latter's wishes reduced into writing vide I A O's Will made on 13.05.07. It is the wish of the 1st applicant and her husband the 2nd applicant to adopt this child.

b) Child in Adoption Cause No.136 of 2007, OMO alias MOE.

This child, a Kenyan boy, is the biological son of the same IAO alluded to at (a) above. In connection with this child also, it was IAO's wish likewise reduced into writing vide I A O's Will referred to at (a) above. In this case also, it is the wish of the 1st applicant and her husband the 2nd applicant to complete compliance with the said I A O wishes. I A O raised this child alone as the child's biological father never took responsibility for the raising of the child.

The 1st applicant, J A A gave oral evidence before this court in addition to the documentary evidence she and her husband the 2nd applicant had filed in court. Although she was born in Kenya and was brought up as a Kenyan citizen, she relocated to the U.S.A. some 6 years ago and is now a U.S. citizen. Her husband the 2nd applicant was also born in Kenya and brought up as a Kenyan citizen. He too has been living and working for gain in the U.S.A. for the last 6 years. He is a permanent resident in the U.S.A. but still remains a Kenyan citizen.

The 1st applicant was trained as a Nutritionist. She worked as such in the U.S.A. but now works there in a technical support capacity with Benchmark Electronics and earns US\$19,000 per annum, which is approximately Kshs.106,000/= per month at an exchange rate of Kshs.67/= to the US\$. The 2nd applicant works in the U.S.A as a Computer Software Engineer and earns US\$57,000 per annum, which works out at approximately Kshs.328,000/= per month at an exchange rate of Kshs.67/= to the US\$. Both applicants own a 5 bedroom house in Mountain View Estate, Nairobi which they have rented out at Kshs.55,000/= per month. They also own a rental property at Kasarani, Nairobi from which they get rent of Kshs.18,000/= per month. They have 4 biological children: R A A, a medical student aged 27 years; P O A, a Software Engineer aged 26 years; R A A, a university student aged 20 years; and C A, also a university student aged 19 years. The children to be adopted are known to the applicants' biological

children and the latter support the proposed adoptions and look forward to them.

Little Angels Network, a registered adoption society in Kenya, has declared both children sought to be adopted free for adoption.

The guardian *ad litem*, T O K at has recommended the proposed adoptions.

Dr. SP of P.O. Box [particulars withheld], Nairobi, Kenya has consented to act as legal guardian of both children in the event of the applicants' death or other incapability before the subject children attain majority age and self-reliance.

Kenya's Director of Children's Services too has recommended the proposed adoptions.

I am satisfied on evidence tendered before court that the applicants meet the legal requirements and social parameters for adoptive parents; that the applicants have the necessary resources to cater for the needs of themselves, their biological children plus the children sought to be adopted; that the applicants are fit and proper persons to adopt the subject children and that it is in the said children's best interests to be adopted by the applicants. The 1st applicant, although originally a Kenyan by birth, is now a citizen of the USA. The 2nd applicant who was born and brought up as a Kenyan is now a permanent resident of the U.S.A. but remains a Kenyan citizen. The applicants intend to take the subject children and live with them in the U.S.A. if they are authorized to adopt them. The two applications straddle the boundary between local adoptions and international adoptions. I treat them as local adoptions. Accordingly, I hereby make an order under section 154(1) of the Children Act, 2001 authorising the applicants, JAA and COA:-

1. To adopt the child, C N alias M N alias D A E, who shall henceforth be known as D A E.
2. To adopt the child, O M O alias M O E, who shall henceforth be known as M O E.

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

Orders accordingly.

Delivered at Nairobi this 15th day of November, 2007.

B.P. KUBO

JUDGE