

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Adoption Cause 85 of 2005

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY AW (A CHILD)

JUDGMENT

By originating summons dated 20th June, 2005 and filed on 21st June, 2005, P R G and A T G of P.O. Box 25171, Nairobi applied, *inter alia*, to adopt BABY A W, to be known as R N G.

The application is stated to be under sections 154; 156 (1); 157 (1); 158 (1) (a), (4) (a); 159 (4), (6), (7), 8 (a); 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. The section of the latter Act cited provides that where an Act or part of an Act is repealed, subsidiary legislation issued under or made in virtue thereof shall, unless a contrary intention appears, remain in force, so far as it is not inconsistent with the repealing Act, until it has been revoked or repealed by subsidiary legislation issued or made under the provisions of the repealing Act, and shall be deemed for all purposes to have been made thereunder. The Children Act, 2001 came into force on 1st March, 2002 vide Legal Notice No.23 of 2002. On 20th May, 2005 there were published the Children (Adoption) Regulations, 2005, being Legal Notice No.43 dated 10th May, 2005 in the Kenya Gazette Supplement No.37, Legislative Supplement No. 21. The publication on 20th May, 2005 of the Children (Adoption) Regulations, 2005 had the effect of rendering section 24 of the Interpretation and General Provisions Act inapplicable to this case and I ignore it.

The applicants are husband and wife, respectively. They were represented by learned counsel, Miss L. Kigwatha. Both applicants are Netherlands citizens. They got married on 19th November, 1999. The first applicant, P R G was born on 22nd May, 1975 and is now aged 31 years. The second applicant, A T G was born on 28th October, 1974 and is now aged about 32 years. The child to be adopted, an African boy, was born on 28th October, 2004 at Thika, Kenya and is now aged about 2 years. Section 158 (1) (a) of the Children Act is to the effect that for the applicants to qualify as adoptive parents, at least one of them should have attained the age of 25 year and be at least 21 years older than the child but should not have attained the age of 65 years. The age requirements have been met in this case.

The first applicant works as a researcher with the International Potato Centre, Kenya, whose headquarters are in Lima, Peru. The second applicant is employed by the Netherlands School Society, Nairobi as an administrator. Both applicants have been in Kenya for about 2 years and 4 months. The first applicant's employment contract expires in December, 2006. The combined income of the applicants is in the region of US \$3,200 per month which translates to approximately Kshs.230,000/= per month. They have a biological daughter born on 11th November, 2003 reported to get on well with the child to be adopted, who has been in the applicants foster care since 18th March, 2005. The applicants got the subject child from New Life Home which has no objection to the proposed adoption. The first applicant reports having grown up with an adopted brother from Sri Lanka and both applicants have indicated desire to help a needy child by giving him or her a family life. There are no children free for adoption in the applicants'

home country.

The child to be adopted, Baby AW was abandoned by his mother A N at a stranger's house when he was 2 days old. The stranger, H N N took the child to Thika Police Station which in turn referred the child to Thika District Hospital. Subsequently the child was committed by court to New Life Home which released the child to the applicants on 19th March, 2005 for foster care. The child has been under the applicants' foster care to date.

A communication dated 2nd December, 2004 from the Royal Netherlands Embassy, Nairobi confirms that the child can obtain Dutch nationality as a result of a Kenyan adoption.

The applicants have stated they are aware that if they are authorized to adopt the child, he will have equal inheritance rights like their biological child and they are prepared to accord him such rights. They have appointed the second applicant's mother, Mrs T A D – D to be the child's legal guardian in the event of their death or other incapacity before the child attains majority age. In the proposed legal guardian's consent letter dated 12th April, 2005, the said proposed legal guardian, however, makes reference only to the event of the applicants' death. This court emphasizes that her guardianship extends not only to a situation where the applicants die but also to a situation where they are otherwise incapacitated before the child attains majority age.

Kenya Christian Homes and the Child Welfare Society of Kenya, both registered adoption societies, have declared the child free for adoption. As far as the law is concerned, one such declaration is adequate. Reports from the guardian *ad litem*, Alice Akinyi Omondi and the Director, Children's Service, Kenya recommend the proposed adoption.

I am satisfied by evidence placed before me that the applicants are fit and proper persons to adopt the child in question; that it is in the child's best interests to be adopted by the applicants, who meet the requirements of Part XII of the Children Act, 2001 relating to adoptions. Accordingly, I hereby make an international adoption order under sections 154 and 162 of the Children Act, 2001 authorising the applicants, P R G and A T G to adopt BABY A W who shall henceforth be known as R N G. The Registrar – General of the Republic of Kenya is hereby directed to make appropriate entries in the Adopted Children Register in compliance with section 169 of the Act.

Orders accordingly.

Delivered at Nairobi this 14th Day of June, 2006.

B.P. KUBO

JUDGE