

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Adoption Cause 18 of 2005

IN THE MATTER OF THE CHILDREN ACT, 2001 AND
IN THE MATTER OF MK (A CHILD)

JUDGMENT

By originating summons dated 21.02.05 stated to be brought under sections 154, 156, 157 and 159 of the Children Act, DKS and LKK of P.O. Box 130 – 00200, Nairobi applied, *inter alia*, for the following substantive order, namely:-

That DKS and LKK adopt MKS and that the child be known as MKK Learned counsel, Mrs M.N. Waiganjo acted for the applicants in these proceedings.

The applicants are Kenyan nationals of the African race. They are husband and wife, respectively, having got married in Nairobi on 17.12.94. They have one biological child, AS , a boy, born on 16.05.97. The 1st applicant, DKS was born on 09.09.67 and is aged around 39 years. The 2nd applicant, LKK was born on 20.05.70 and is aged around 36 years. The child to be adopted, a Kenyan boy also of the African race, was born on 21.06.2000 and is aged about 6 years. 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 statutory age requirements have been met.

The applicants are maternal uncle and aunt to the child, born to a single mother, Angela Muthiini Syengo. The child's biological father, Paul Bett never took responsibility for the child. He did, however, give written consent on 07.12.04 to the proposed adoption now under consideration.

The child's biological mother committed suicide in The Netherlands on 11.08.03 while undertaking postgraduate studies there. In the suicide note she left behind addressed to her family, the child's mother stated, *inter alia*, as follows:

'Sorry, don't mourn for me for a long time. I did it because I was not performing as required. It seems I always make the wrong choices in life and this time I have had the brink of it I kept on choosing the wrong courses, reason I don't know. But at this point I have reached there is no turning back and am not prepared for the world. L and D (applicants herein) please if you can, take care of M (child to be adopted). Teach him to be a good boy To my whole family, it might seem a shock because of what I have done but I couldn't stand the system anymore. I was not well prepared for this course. Now I know what it means first to have work experience. I made wrong choices and it has led me to taking this decision I was unable to cope with the workload and now I take my life. Goodbye!'

And in a postscript to the subject child, M the suicide note records:

'I did it for your good. I could not take care of you as I thought I would. I hope however (sic) takes care of you will show you the same affection and love I tried to show Mummy is going to a bad place but you be a good boy and obedient.'

The 1st applicant, DKS told this court that he is in the computer business and that the subject child's mother was his sister. It was his evidence that she had attempted suicide on 23.07.03 by taking drugs to kill herself. She telephoned him while crying and complained about the learning being too hard. He encouraged her and suggested that she should abandon the studies. She told him she was embarrassed not getting her papers and that upon her return she would go upcountry to Kitui and hide there. However, she did not make it back home as on 11.08.03 she took away her life, there in The Netherlands.

The 2nd applicant, LKK told this court that she works with Total, Kenya as Exports Logistics Manager; that she and the 1st applicant have lived with the subject child since 2000; that the child is in good health; and that the child gets on very well with her and the 1st applicant.

In a statement from the Bar, applicants' counsel informed the court that the child to be adopted, now aged about 6 years, has grown up with the applicants' biological child aged around 9 years and that the two children, both boys, attend the same school. It appears the applicants are faithfully fulfilling the wishes of the late mother of the subject child by taking care of the said child and treating him as their own.

The Child Welfare Society of Kenya, a registered adoption society in Kenya, has declared the child free for adoption as required by law. The guardian *ad litem* has recommended the proposed adoption as has also the Director, Children's Services. This is an adoption within the family.

I am satisfied on the 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. Accordingly, I hereby make an order under Section 154(1) of the Children Act, 2001 authorizing the applicants, DKS and LKK to adopt the child, MK who shall henceforth be known as MKK. The Registrar-General is directed to make appropriate entries in the Adopted Children Register as required by law.

Orders accordingly.

Delivered at Nairobi this 15th day of December 2006.

B.P. KUBO

JUDGE