



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF D.A.S. (A CHILD)
JUDGMENT

By originating summons dated 25.05.05 and filed the same day stated to be brought under sections 154, 156 (1), 157 (1), 158 (1) (a), 159 (1) (a), 160 (1), (2), (4), 163 (1) (b), (c), (e), (f), 165 and 170 of the Children Act, No.8 of 2001 Laws of Kenya, ADS and CAS of P.O. Box *[particulars withheld]*, Nairobi, Kenya applied, *inter alia*, for the following substantive order, namely:-

That ADS and CAS do adopt D.A.S.the minor herein.

The applicants were represented in these proceedings by learned counsel, Mr P.O. Ong'ondi. Both applicants are Kenyans of Asian race, the 1st applicant ADS by birth while the 2nd applicant CAS acquired Kenyan citizenship after her marriage to the 1st applicant in India on 30.01.89 and accompanying the latter to Kenya.

The 1st applicant was born on 14.12.58 at Mombasa, Kenya and is aged around 48 years. The 2nd applicant was born on 10.06.64 in India and is aged around 42 years. The child in question was born on 15.02.02 in Mumbai, India and is aged around 4 years 10 months. Section 158 (1) (a) 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 in this case.

The applicants have been unable to get children of their own for medical reasons, so they opted for the adoption route. For that purpose, they went to India and arranged to be appointed guardians of the child they now seek to adopt. The child has been under their custody and care here in Kenya for the last 4 ½ years and is reported to have bonded well with them.

The applicants are reported to have undergone guardianship proceedings in respect of the child in India and they were given permission to give the child unto themselves. They then brought the child, a girl also of Asian race, to Kenya and have lived with her for the last 4½ years as recorded earlier.

Section 165 of the Children Act, 2001 provides:

'165. (1) An adoption order or an interim adoption order, may be made in respect of a child who has already been the subject of an adoption order under this Act or under any other Act or

Ordinance for the time being in force in any country in the Commonwealth.

(2) In relation to an application for an adoption order in respect of such a child, the adopter or adopters under the previous or last adoption order shall be deemed to be the parent or the parents of the child for all the purposes of this Part.'

The above section seems to be the nearest provision covering the applicants' situation following their appointment as guardians of the subject child. The child is reported to have been given up for adoption at the Missionaries of Charity in Mumbai, India from where the applicants got the said child. The applicants were not able to ascertain who the child's parents are. I deem the applicants to be the parents of the child in terms of section 165 of Kenya's Children Act, 2001.

The 1st applicant is a self-employed businessman and Managing Director of Safari Kit Ltd in Nairobi. The 2nd applicant is a housewife and shareholder in the said business. The applicants informed the Director, Children's Services that they have an income of between Kshs.180,000/= and Kshs.200,000/= per month and that they own the house they live in in Parklands, Nairobi and that they also own two motor vehicles. I am satisfied that the applicants have requisite means to cater for the child's needs adequately.

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*, Neelkamal Rameshchandra Shah has recommended the proposed adoption. Kenya's Director of Children's Services queried the status of the proceedings in India which led to placement of the child in the applicants' hands but left it open to this court, if satisfied with the propriety and validity of those proceedings, to grant the adoption order sought. The said Director confirms that bonding has taken place between the child and the applicants. I accept the guardianship proceedings which took place in India regarding the child as valid.

Having considered all relevant factors in the present adoption proceedings, I am satisfied that the applicants meet the legal requirements and social parameters for adoptive parents; that they 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 pursuant to section 154 (1) of the Children Act, 2001 authorising the applicants, ADS and CAS to adopt the child D.A.S. 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 8th day of December, 2006.

B.P. KUBO

JUDGE