



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Adoption Cause 18 of 2006
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY JO (A CHILD)
JUDGMENT

By originating summons dated 16.02.06 and filed on 17.02.06 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), 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 Laws of Kenya, DR. JN and RMN of P.O. Box *[particulars withheld]*, Nairobi applied, *inter alia*, for the following substantive order, namely:-

That the applicants be authorized to adopt BABY JO to be known as NMN.

The applicants were represented in the adoption proceedings by learned counsel, Miss L.W. Kigwatha.

The applicants are husband and wife, respectively, having got married on 16.12.89. Both are Ugandan citizens. The 1st applicant is a Medical Doctor and Works with Sight Savers International in Kenya. The 2nd applicant is a trained Midwife but currently a full-time housewife.

The 1st applicant, Dr JN was born on 26.06.62 and is aged around 44 years. The 2nd applicant, RM was born on 15.08.61 and is aged around 45 years. The child to be adopted was born on 15.05.04 at Eshibinga in Butere/Mumias, Western Province, Kenya and is aged around 2 ½ 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 have two biological sons aged 14 years and 12 years. They also have an adopted son aged 17 years. It was their wish to have a daughter and the subject child, a Kenyan girl, fits the bill.

The child to be adopted, a Luhya, was born out of an incestuous relationship between her mother and her cousin. According to Luhya custom, the child is considered a taboo child. The child's mother, RA handed over the child to the Kisumu District Children's Office on 05.07.04 when the child was three weeks old vide a handing – over note which stated, *inter alia*, as under:

'I will not claim the child back since traditionally I am not allowed to stay with the child since the child is a Taboo child. The office is free to give up the child for adoption.'

The handing over note is signed by one EM of P.O. Box *[particulars withheld]*, Maragoli as witness. The relationship between the witness and the child's biological mother is not disclosed. Kenya's Director, Children's Services queried the validity of the handing-over vis-à-vis section 158 (4) (b) of the Children Act dealing with consent required from parents or guardian of the child's mother if the child's mother is herself a child. I find that section 158 (4) (b) of the Children Act does not apply since there is no evidence that the child's mother was herself a child at the time she handed over the child to the Kisumu District Children's Office and that, therefore, there was no requirement for consent from the child's grandparents.

The applicants have had custody, care and control of the child since 20.09.04 and are reported to have bonded well with the child. Little Angels Network, a registered adoption society in Kenya, has declared the child free for adoption as required by law. Monica Wambui Mwaura, guardian *ad litem* of the child has recommended the proposed adoption. The Director, Children's Services while querying the validity of the process of handing over of the child by her biological mother all the same recommended the proposed adoption provided the court finds the handing over process valid. I have already found the handing over process valid.

Applicants' counsel urged the court to presume abandonment of the child and dispense with the biological mother's consent. The record shows that after the child's biological mother handed the child over to the Kisumu District Children's Office when the child was three weeks old, the said mother was requested to go back to sign final consent but she never went back. I dispense with the biological mother's consent to the proposed adoption.

The 1st applicant stated that he earns £2,406 per month. He did not, however, indicate whose currency the pounds refer to. I take the currency to refer to UK pounds. At an exchange rate of Kshs.137/= to the £, Dr JN's earnings work out at around Kshs.329,622/= per month. I am satisfied that the applicants' family income is adequate to cater for the child's needs comfortably.

Mr Mbaya Madahana, Senior Children's Officer at the Adoptions Secretariat at the Children's Department Headquarters, Nairobi suggested that the court imposes conditions to any adoption order it grants, e.g. submission by the applicants of periodic reports from an adoption society in Uganda when the applicants relocate to Uganda, to safeguard the interests of the child. In this connection, the 1st applicant produced a photocopy letter dated 30.06.06 from the Immigration Department in Kampala, Uganda to the effect that if the applicants relocate to Uganda, their adopted child shall on application be registered as citizen of Uganda. I find this to be a sufficient safeguard. In the same connection, I also note that the 1st applicant has been on contractual employment with Sight Savers International in Kenya for long and that his current contract expires in the year 2010. The applicants expect to stay in Kenya until 2010 at the earliest. The proposed adoption straddles the boundary of local and international adoption and I treat it as the latter.

Having considered all relevant factors pertaining to the adoption application, I am satisfied 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 international adoption order under sections 154 and 162 of the Children Act, 2001 authorising the applicants, DR JN and RMN to adopt BABYJO who shall henceforth be known as NMN. The Registrar- General of the Republic of Kenya is directed to make appropriate entries in the Adopted Children Register in compliance with section 169 of the Act.

Orders accordingly.

Delivered at Nairobi this 8th day of December, 2006.

B.P. KUBO

JUDGE