



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO.109 OF 2004

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY MN alias VDI (A CHILD)

JUDGMENT

By originating summons dated 27.05.04 and filed in the High Court the same day, RVD and MVD of Post Office Box [***particulars withheld***], Nairobi, Kenya jointly applied to this court under sections 154, 156 (1), 158 (1) (a) (i), (4), (6), (7), 160 (1), (2), (4), 164 (1) and 170 of the Children Act, 2001 (No.8 of 2001) and section “22” (sic) of the Interpretation and General Provisions Act, Cap.2 for the following orders:-

1. That CKM, Legal Adviser with the International Civil Aviation Organisation/United Nations Development Programme, Nairobi, Kenya be appointed guardian ad litem in this case.
2. That the Children’s Department investigate the applicants and file a report.
3. That the applicants be authorized to adopt MN alias VDI to be known as MNVD.
4. That the court be pleased to make any further orders it deems necessary.

The reference to section 22 of the Interpretation and General Provisions Act is wrong as the said section refers to repeal and substitution of written law and how the repealing law comes into operation and replaces the old law. The current law on adoptions is the Children Act, 2001 which came into force on 01.03.02 and, inter alia, repealed in toto the previous substantive Act, Cap.143. The relevant section of the Interpretation and General Provisions Act for purposes of the present application is section 24 by virtue of which the Adoption Rules previously made under the Adoption Act (now repealed) have been saved and can be and actually are applied to adoptions in the absence of new rules under section 183 of the Children Act, there being no contrary intention in the Children Act. Otherwise a good job was done in the preparation of the application now before court plus requisite supporting documents. I can, therefore, afford to be brief in this judgment.

The salient facts may be summarized as under. On 29.10.03 at about 6.30 p.m. a night watchman employed by the applicants herein alerted the applicants to the presence of an African female baby abandoned in a coffee plantation near the applicants’ residence along Kwaheri Road, off Kiambu Road, Nairobi. The applicants rushed to the scene and found about 20 bystanders near the baby who did not seem to react to the crying baby who was underclothed and covered in sand. The applicants picked the baby up, took her to their home and soon thereafter rushed her to Gertrude’s Garden Children’s Hospital in Nairobi accompanied by police officers from neighbouring Thindigwa Police Post. The baby, who was

newly born, was admitted in Gertrude's Garden Children's Hospital for treatment for 8 days and thereafter handed over to Imani Street Children Rehabilitation Agency in Kayole, Nairobi. The applicants have been involved with the agency for many years and the first applicant, Rudy is a member of the Board of the agency. The baby was named MN. The applicants kept visiting M regularly at the agency and showed interest in adopting her.

On 04.02.04 the Senior Resident Magistrate's Children's Court, Nairobi formally committed the baby, M into the care/custody of Imani Rehabilitation Centre until further court orders and the Centre immediately released the baby to the applicants for foster care. Thereafter the applicants, who rescued the baby, started the process of legally adopting the said baby.

Both applicants are Dutch citizens. They were born in the Netherlands and got married there on 29.12.88 and have had a stable monogamous marriage for 16 years. They have lived in Kenya for as many years. The first applicant, Rudy is 42 years old while the second applicant, Marion is 41 years old. The baby is one year old today. Section 158 (1) (a) of the Children Act is to the effect that either or both of the prospective adoptive parents should have attained at least 25 years of age and be at least 21 years older than the child but should not have attained the age of 65 years.

Both applicants meet the requisite age requirements.

The first applicant is Ag. Chief of Conference Services with the United Nations office at Nairobi. He is in permanent employment and earns a good income. The second applicant is a homemaker, i.e. a housewife. The applicants have their own 3 biological children, all boys aged 13 years, 10 years and 7 years, respectively. The applicants and their biological children are said in the social inquiry reports to have bonded well with the baby, M since 04.02.04 when the baby or child was put into the applicants' foster care. Section 157 (1) of the Children Act is to the effect that the child must have been in the continuous care and control of the applicants within the Republic of Kenya for a period of 3 consecutive months preceding the filing of the application for adoption. Since the present application was filed on 27.05.04, this requirement has been met.

The guardian ad litem to the baby, i.e. Mr. M, was appointed such guardian on 25.06.04. He is a Ghanaian national; a legal adviser with the International Civil Aviation Organisation/United Nations Development Programme, Nairobi; has lived in Kenya since 1995; knows the applicants well and recommends them as fit and proper persons to adopt the baby. Kenya's Children's Department conducted a social inquiry and filed a report favourable to the applicants' adoption application. The Child Welfare Society of Kenya, a registered adoption society, has declared the baby free for adoption as she was abandoned and nobody has claimed her. This is confirmed by the Officer in Charge, Kiambu Police Station under whose command the baby's abandonment site falls.

The applicants have consulted their relatives regarding their intended adoption of the baby and their relatives have welcomed the intended adoption. The applicants told this court that they hope to live in Kenya even after the first applicant retires from his employment and that they bought a plot along Bofa Road at Kilifi in the Coast Province of Kenya. A brother of the first applicant, Mr. Robertus Theodorus Maria Van Dijck has consented to be the legal guardian of the child, M Nishike in case of the death of the applicants or their being otherwise incapacitated before the child attains full (majority) age. And from the Royal Netherlands Embassy in Nairobi came the following communication dated 04.05.04:

“Hereby the Royal Netherlands Embassy states that the Dutch Government recognizes Kenyan Adoptions provided the legal procedure leading to the adoption is thoroughly done according to Kenyan law.”

I have carefully considered the adoption application plus supporting affidavit evidence, reports and other documents in the file. The applicants meet the requisite legal requirements and social parameters for intending adoptive parents. They have young children of their own, so they are not new to parenthood. The first applicant earns good income. The child to be adopted has bonded well with the applicants and their biological children. Imani Rehabilitation Centre, Nairobi which was granted interim legal custody of

the child on 04.02.04 has no objection to the applicants being authorized to adopt the child. I have no doubt that the applicants mean well for the child, M Nishike and that it is in the best interests of this child to be adopted by the applicants. It is their wish that if the adoption is authorized, the child be known as MNVD

I am satisfied that the applicants' application does comply with Part XII of the Children Act, 2001 relating to adoptions. Accordingly, in exercise of the power vested in the High Court by section 154 (1) of the Children Act, 2001, I hereby make an adoption order authorizing the applicants, RVD and MVD to adopt the child, BABY M NN alias VDI who shall henceforth be known as MNVD. The Registrar – General of the Republic of Kenya is hereby ordered to make appropriate entries in the Adopted Children Register in compliance with section 169 of the Children Act, 2001.

Orders accordingly.

Delivered at Nairobi, Kenya this 29th day of October, 2004.

B.P. KUBO

JUDGE