

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CASE NO 165 OF 2004

IN THE MATTER OF THE CHILDREN ACT (No 8 of 2001)

AND

IN THE MATTER OF S.K.S – MINOR

JUDGMENT

On 25th August 2004 MAS (hereinafter called “the Applicant”) filed an application in this court by way of Originating Summons seeking inter alia for orders to adopt a Minor male child known as SKS (hereinafter called “the Minor”).

On 1st October 2004 AHS was duly appointed as guardian ad litem of the said Minor. When the said application for adoption came for hearing on 15th October 2004, the said guardian ad litem, described as a Nairobi businessman, together with Linnet Ouna a Programme Officer with the Child Welfare Society of Kenya and Judy N. Ndungu Assistant Director Children’s Services presented their respective reports in respect of these adoption proceedings.

The said Minor was born in India on 21st March 1987. At birth, the said Minor is said to have been abandoned. On 18th September 1987 A H S, the husband of the Applicant, vide Miscellaneous Petition No 170 of 1987 in the Bombay City Civil – Court at Bombay was duly appointed the sole adoptive father of the said Minor. The said adoption order declared that the said adoptive father and the Applicant herein were thenceforth to be considered as the parents of the Minor. The said Minor acquired Kenyan citizenship on 12th April 1990. However, on 19th March 1992 the said adoptive father died here in Kenya. The said Minor has since then been under the care and protection of the Applicant as a mother to the exclusion of all.

The said Minor, who is now aged 17 years has, as provided under the Children Act, formally consented under oath to be adopted by the Applicant.

The Applicant as aforesaid is the widow of the now deceased adoptive father and is of British nationality. According to the reports filed, the said Applicant is fit and proper person capable of adopting and providing due parental care and attention to the said Minor. On account of unexplained physiological reasons the Applicant was not able to get her own biological children and hence reason for the initial adoption of the Minor by the said deceased husband of the Applicant.

The Minor has according to the said reports lived all his life with the Applicant and the said now deceased adoptive father, and thus knows the Applicant as his mother. Between the Applicant and the Minor there now exists an inseparable mother/son bond. Since the death of the said adoptive father, the Applicant has singularly and continuously played the role of a surviving parent without any restraint whatsoever. The said widowed Applicant now seeks to legalise her position as the adoptive mother in furtherance of the aforesaid orders made by the court sitting in Bombay, India.

The said Applicant has also made future cost effective educational plans for the Minor in the United Kingdom, her country of nationality, and which plans can only substantially crystallize for the benefit of the Minor upon granting of adoption orders of the Minor to the Applicant. I am satisfied that the aforesaid special circumstances justify consideration of the making of an adoption order. I am also satisfied that the Applicant has duly complied with the applicable provisions of the Children Act (Act No 8 of 2001)

The said Minor also duly qualifies for adoption having been assessed and declared free for adoption by a registered adoption society as provided under the said Act.

I have duly considered all the aforesaid reports together with the pleadings and submissions filed herein. I have heard the presentations made by the counsel for the Applicant. I am convinced that the adoption sought by the Applicant shall be in the best interests of the said Minor. In pursuance of the said application and the necessary statutory consent on record as provided under section 158(4)(f) and in furtherance of the provisions of section 158(2)(b) of the aforesaid Act, I accordingly order on the basis of the said special circumstances that the said minor be and is hereby adopted by the said Applicant. I further order that the said Minor be named SKS henceforth and direct the Registrar-General to make appropriate entries in the adopted Children Register accordingly.

DATED DELIVERED and SIGNED at Nairobi this 29th day of October, 2004.

P. J. KAMAU

AG. JUDGE