



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO.194 OF 2004

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF LK (A CHILD)

JUDGMENT

By originating summons filed in the High Court on 08.10.04 and stated to have been taken out under the various sections of the Children Act, 2001 cited therein, the applicants, M P and K R (*particulars withheld*) of postal address care of via (*particulars withheld*) prayed for the following orders:-

1. That J A of P.O. Box (*particulars withheld*), Nairobi in the Republic of Kenya be appointed guardian *ad litem* to the child in this case.
2. That the Director, Children's Services Department in the Office of the Vice- President and Ministry of Home Affairs investigates the applicants' fitness to adopt the child and file a report.
3. That the applicants be authorized to adopt LK, to be known as LP.
4. That the court be pleased to make any further orders as it deems fit and necessary.

The applicants' application was accompanied by both applicants' statement in support thereof plus an affidavit sworn by the 1st applicant, M P alone on 01.10.04 vouching for the truthfulness of the contents of both applicants' supporting statement. Since the application is a joint venture, it is advisable for the supporting affidavit also to be sworn by both applicants.

On 05.11.04 J A, Information Technology expert was appointed guardian ad litem to the child and he filed his report regarding the applicants and the child on 19.11.04. The Director of Children's Services who was directed on 05.11.04 to investigate the fitness or otherwise of the applicants to adopt the child filed her investigation report on 18.11.04. Kenyan Law requires the subject child and the applicants to be evaluated and assessed by a registered adoption society in Kenya. This was done by the Child Welfare Society of Kenya, a registered adoption society in the country, and the society filed its report on 05.11.04.

The following emerges from the three reports alluded to above. The child, an African boy, was found abandoned on 04.07.03 along a railway line at Githurai Kimbo. He seemed to have been newly born. He was taken to the nearest police post and then to Kenyatta National Hospital, Nairobi where he stayed until 18.08.03 when he was placed at the Abandoned Baby Centre, Nairobi which placed the boy in the custody of the applicants for foster care on 29.06.04 and he has been under the applicants' care ever since.

The applicants are Italian nationals and are husband and wife, respectively. They got married in their

home country, Italy on 15.09.01 but have not been able to get their own child and have opted to achieve the same objective via the adoption route, but in doing so they chose to go for a child who does not have the fortune to have own parents to look after him. Kenya's Assistant Director of Children's Services, Mrs. J.N. Ndungu, who conducted a social inquiry about the applicants asked them the reason for choosing an African child and she reports as follows:

“Why a child from African? Adopting in their own country is near impossible. Alternatively, they could have looked to Eastern Europe or South America for the adoption but preferred an African child because, according to them, Africa is the mother of the human race. Besides, they continue, African people relate well with children.”

The Assistant Director's report adds that the applicants told her they hoped to give the adopted child the best opportunities and support him in his chosen path.

Back in Italy, two persons have offered to be the child's legal guardians in the event of the demise of the applicants or their otherwise becoming incapacitated. These people are E R and P F who are sister and brother-inlaw of the 2nd applicant K R, respectively. The said guardians have stated that Italian regulations recognise that the adoption of a foreign child is legal and, therefore, affiliation by adoption is identical to affiliation by blood. I understand this to mean that the child in question will enjoy all rights a natural child of the applicants would enjoy, including inheritance.

The applicants' combined income is reported to be 2,250 Euros per month, which translates to about Kshs.238,500/= per month. This is reasonable income. The applicants are also reported to have 2 houses, they live in one and rent the other for extra income. They also own two motor vehicles. The 1st applicant is an environmental guide while the 2nd applicant is a psychiatric nurse.

The Child Welfare Society of Kenya has declared the child free for adoption as required by Kenyan law. As recorded earlier, the child was found abandoned soon after birth. His biological parents are unknown and neither they nor any other persons have claimed the child for over six months. The Abandoned Baby Centre which took the mantle of being the child's legal guardians in Kenya has consented to his adoption by the applicants. Kenya's Director of children's Services reports that the applicants have the means to take care of the child and to provide a suitable home environment in which to grow up. The Director recommends the applicants' adoption application. These sentiments have been echoed by the Guardian *ad litem*. The applicants have been declared eligible to adopt a foreign child like the one under discussion by relevant bodies in their home country. The applicants have indicated that they will avail the child education opportunities as education is free and compulsory in Italy until age 18. Medical care is similarly provided by the State. The applicants have stated that they have not been influenced by any improper motive in seeking the subject adoption.

I am satisfied that the applicants meet the legal requirements and social parameters expected of adoptive parents; that the applicants are fit and proper persons to adopt the child in this case; 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, MP and KR jointly to adopt the child, LK who shall henceforth be known as LP. The Registrar – General of the Republic of Kenya is hereby directed to make appropriate entries in the Adopted Children Register in compliance with section 169 of the Act.

Orders accordingly

Delivered at Nairobi, Kenya this 1st day of December, 2004.

B.P. KUBO

JUDGE