

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
H.C. ADOPTION CAUSE NO. 121 OF 2001

IN THE MATTER OF VICKY WANGAI – AN INFANT

JUDGMENT

J and K D are American Citizens but have been resident together in Kenya since 1994. They have been married since 1976 and have four children of their own born between 1978 to 1987. They have adopted one child named E ND in Zambia on March 1999.

J is working with Theological college as a teacher in Machakos . K is a housewife looking after the children. The present income of the family is U.S\$ 2,553/31 cents per month. The two elder children are now in U.S.A and are fending for themselves.The other two biological children are studying at Rift Valley Academy at Kijabe. According to the reports made both by the Guardian – ad- Litem and the Children Officer, all the children have bonded well with both the adopted and present infant and the facts of the adoption or the different race are of no concern or importance to them.

They are American citizens, and despite the fact that still there is a difference in white and black culture in that country, the applicants and their family have no qualms about the difference.Moreover, in their place of origin Kansas, there is fast growing social inter- dependency between the two races and the society is affable to the races and the race discrimination is not a problem. The financial situation of the applicants also has been considered in the reports and this court does not find any difficulty in that sphere.

The applicants are given profuse and well considered recommendation in both the reports.

The capacity and social background of the applicants are thus cleared and this court accepts the findings made in the aforesaid reports.

Two legal issues arise and I shall consider them now.

The first is the competence of this application after the enactment and commencement of Children Act from 1st March, 2002.This application was filed before the said date. I do note that the Children Act is silent on the savings of such applications which were properly filed before its advent.

I shall only look at the provisions of section 23 of the Interpretation and General Provisions Act (Cap. 2 Laws of Kenya).The Children Act does not stipulate any contrary intention as it is silent on the issue. Hence after specific attention of section 3 (e) of the said Act, I find that the present application is not affected by the enactment of the Children Act and its provisions repealing the Adoption Act (Cap 143) under which this application was filed.

The second issue in law will be provisions of Section 4(3) of the Adoption Act under which this application is filed. The background of the infant is very tragic. Baby R was found abandoned with HIV Positive status. The police handed over the infant to Kenyatta National Hospital from where she was given to the New Life Home.

The Applicants saw her there and took her under their wings since 8th March, 2001. They decided to adopt her with an intention to give a sibling of her age to their previously adopted child who is about 5 years old presently.

In any event this court find that the infant's welfare shall be properly maintained and looked after if she is allowed to be adopted by the present applicants. She was found abandoned on 6th November, 2000 and this court shall treat the said date as her date of birth in the absence of any other evidence. In view of her total lack of facts as to her natural parents or other relative I also grant that the consent of the parents

be dispensed with in this case.

Finally I direct that the applicants are and be authorized to adopt V W who shall henceforth be known as R A R D.

Dated and delivered at Nairobi this 14th day of May, 2002.

K. H. RAWAL

J U D G E.