

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

ADOPTION CAUSE NO. 203 OF 2014 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT

(NO. 8 OF 2001)

AND

IN THE MATTER OF BABY P

JUDGEMENT

1. Andre J B S T and T E I are a married couple. The male applicant is a Kenyan citizen, while the female applicant is a citizen of India. The two are Kenyan residents. They seek to adopt a female child, known for the purposes of these proceedings as Baby Pallavi. They have moved the court by their Originating Summons dated 29th August 2014.
2. Baby P was born on 25th November 2007 to M F, a resident of Nachinola Bardez, Goa, India, at the Goa Medical College. The birth mother gave up the child to a charitable organisation called Nachinola Goa for adoption or guardianship. Details of the father of the child or the birth mother's relatives were not disclosed for social reasons.
3. The child remained at the charitable institution, Nachinola Goa Children's Home, until the male applicant was appointed her legal guardian on 5th August 2008 by the Court of the Civil Judge Senior Division at Mapusa, Goa, in (Port) **Civil Miscellaneous Application No. 75 of 2008A**. The guardianship order also placed the child with the male applicant and permission to him to apply and obtain a passport and visa to enable the child travel to Nairobi with him. The male applicant was also ordered to apply for the adoption of the child once he got to Nairobi. The Indian government issued the child with a passport with which she travelled to Kenya.
4. The adoption is being arranged by the Child Welfare Society of Kenya, who had initially prepared a home study report on the applicants for the purpose of the guardianship proceedings in India. Child Welfare Society of Kenya freed the child for adoption and issued a certificate to that effect dated 23rd May 2014.
5. To facilitate this adoption, the applicant has been assessed by the Child Welfare Society of Kenya, the Director of Children Services, and the guardian *ad litem*, A K A. These three have compiled and filed reports in court - the Child Welfare Society of Kenya adoption society's report is dated 27th October 2011, while that of the Director of Children's Services is dated 15th May 2015. The guardian *ad litem*'s report is dated 7th May 2015. All these reports are favourable and recommend the proposed adoption.
6. The applicants have filed documents that demonstrate that they have the financial and emotional capability and capacity to take care of the child. The child appears to have bonded well with them and she considers them to be her parents.
7. I have noted from the report of the Director of Children Services that the state overall approves the proposed adoption. The only concern raised is that the mother of the child signed a consent giving up the child for adoption within two weeks of the child's birth. The position taken by the state is

that that was contrary to section 158(8)(a) of the Children Act, which provides that the document signifying the consent of the mother is not admissible under section 158 unless the child in question was at least six weeks old at the material time. In this case the child was born on 25th November 2007, while the consent by the mother was signed on 5th December 2007.

8. On the face of it, the consent signed by the mother on 5th December 2007 should not be admissible given the clear wording of section 158 of the Children Act. However, I take cognisance of the fact that the child was taken through a valid legal process in India, culminating in the grant by the relevant court of the requisite jurisdiction in India of the guardianship order in favour of the male applicant on 5th August 2008. It is the said order that facilitated the placement of the child with the applicants in 2008 and set the stage for the current proceedings. The child has remained with the applicants since.
9. In the opinion of this court it would be in the best interests of the child that he is adopted by the applicants. The applicants will be able to provide a home and a family for the child to grow up in and thereafter be a useful member of the family and the society at large. Consequently, the applicants shall assume all parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if she was born to them. The applicants have been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child and that the child shall have the right to inherit their property. The applicants cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.
10. The court allows the applicants application to adopt the child. The applicants, A J B S T and T E I, are hereby allowed to adopt the child, Baby P. She shall hereafter be known as D C T. L T is hereby appointed the legal guardian of the child in the event of the untoward happening to the applicants. The Registrar-General is directed to enter this adoption order in the adoption register. The guardian *ad litem* is hereby discharged.

DATED, SIGNED and DELIVERED at NAIROBI this 5TH DAY OF FEBRUARY, 2016.

W. MUSYOKA

JUDGE