

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

ADOPTION CAUSE NO. 46 OF 2015

IN THE MATTER OF CHILDRENS ACT CAP 141

AND

IN THE MATTER OF BABY J B

H S1ST APPLICANT

M A S.....2ND APPLICANT

JUDGMENT

Before this court is an application filed by the applicants H S and M A S seeking adoption of Baby J B. The applicants are Danish citizens and have been married since 2001. The first applicant is a Manager at **[particulars withheld]** Pharmaceutical Company and the second applicant is a **[particulars withheld]** in Denmark. The applicants have not been blessed with children in their marriage for medical reasons. The applicants resorted to raising a family through adoption. The applicants expressed their wishes of adopting a child specifically from Kenya to an adoption agency, AC International Child Support-Denmark, which is approved by the Kenya's Adoption Committee to conduct international adoptions. The adoption agency carried out a home study and found the applicants suitable to adopt a foreign child. The State Administration for Greater Copenhagen and the National Social Appeals Board of Denmark filed reports dated 4th June 2013 and July 2013 respectively, granted the applicants permission to proceed with the adoption of a foreign child. Their application was sent via Kenya Children's Home, a local adoption society and the same was approved by National Adoption Committee of Kenya in a meeting held on 22nd July 2014 as per the certificate attached. The Danish Ministry of Social Affairs and Integration, in its letter dated July 2013, confirmed that the Danish Government will recognize the adoption order and the Danish Embassy in Nairobi will issue a Danish passport to the child thereby adopted.

The child, J B was abandoned at Don Bosco Makuyu Catholic Church on 14th November 2011 and was found by the employee of the church while cleaning. He was presumably born on 25th October 2011. The matter was reported to Makuyu Police Station on the same day vide OB No. 23/14/11/2014 and was placed under care and protection of Kandara Children's Home. The child was committed to the same home by the Resident Magistrates Children's Court at Kandara vide Protection and Care Case No. 11 of 2014. The police traced the relatives of the child but all in vain. The child was declared free for adoption by Kenya Children's Home, an adoption society and a certificate no. **[particulars withheld]** was issued on the 16th July 2014. The child was placed under the mandatory custody to the applicants vide foster care agreement form dated 12th November 2014. The court appointed B A O as the guardian ad litem from the order dated 27th February 2015.

Reports were made by the AC International Child Support-Denmark, Kenya Children's Home, the guardian ad litem and the Director Children's Services prior the adoption hearing. The court evaluated the same and they recommended the adoption. This being an international adoption, there are conditions that have to be satisfied before granting the same according to **section 162 of the Children's Act**. The first condition is consent of the parents or relatives that has to be sought. The court evaluated all the reports made by Kenya Children's Home, Director of Children's Services and guardian ad litem respectively and they all confirmed that the child was abandoned at Don Bosco Makuyu Catholic Church. The matter was reported to Makuyu Police Station vide OB No.23/14/11/2014. The police traced the relatives of the child

for six months but all in vain as per the letter dated 18th July 2013. For this matter, the consent of the parents or relatives is dispensed with pursuant to **section 159(1)(a)(i) of the Children's Act.**

As regards the second condition, the applicants were assessed by the adoption agency, AC International Child Support-Denmark, approved them to be favorable parents and can proceed to adopt a foreign child. The State Administration for Greater Copenhagen and the National Social Appeals Board of Denmark in their letters dated 4th June 2013 and July 2013 respectively, granted the applicants permission to proceed with adopting a foreign child. The Danish Ministry of Social Affairs and Integration gave an assurance that the Danish government will recognize the adoption order granted in Kenya and the Danish Embassy in Nairobi will proceed to issue a Danish passport to the child thereby adopted on presentation of the said order. Hence the applicants satisfied this condition.

The third condition was fully satisfied according to the reports made by the adoption agency, AC International Child Support-Denmark, guardian ad litem, District Children's Services and the adoption society. The foreign adoption agency AC International Child Support carried out a home study on the applicants and approved them to be emotionally and financially stable to adopt a foreign child. Locally, the adoption society Kenya Children's Home affirmed that the applicants were suitable parents for adoption and so was the National Adoption Committee sitting on 22nd July 2014. The guardian ad litem observed during her home visits to the applicant's house in Kilimani that the child had bonded well with the applicants. The applicants have given the child good care and taught him how to communicate in Danish. The guardian ad litem therefore approved them to be suitable to adopt the child together with the Director Children's Services according to her report. The applicants have no criminal record as per the certificates dated 17th June 2013.

The court is of the opinion that it's in the child's best interest to be adopted by the applicants since they have met the criteria of international adoptions. The court makes the orders that the applicants shall assume the responsibilities of parents to the child as one born in marriage. The child shall be entitled to inherit from the property of the applicants and shall not be given up because of any eventualities that might result; like bad behavior. The applicants shall grant the adoption society access in their country to perform the post-adoption supervision for a period of three (3) years and at any reasonable time. AC International Child Support has guaranteed this court that it shall carry out the post-adoption supervision and shall avail the annual reports for a period of three (3) years.

The court hereby grants adoption of the child to the applicants H S and M A S. The child shall be known as B B A S. His date of birth shall be 25th October 2011 and the place of birth shall remain Makuyu. The legal guardians of the child shall be R A O and J M Ov (who are sister and brother-in-law to the 2nd applicant) should any misfortune occur. The guardian ad litem is hereby discharged. The Registrar General should thereby enter the order of adoption. It is so ordered.

READ AND SIGNED IN OPEN COURT ON THIS 8TH DAY OF MAY, 2015

M. MUIGAI

JUDGE