

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

ADOPTION CAUSE NO. 61 OF 2015

IN THE MATTER OF CHILDRENS ACT CAP 141

AND

IN THE MATTER OF BABY J B

P J W F1ST APPLICANT

J C M F.....2ND APPLICANT

JUDGMENT

The Applicants P J W F and J C M F made an application before this court seeking adoption of baby Job Baraka. The applicants are Dutch and have been married since 9th of September 2005. The first applicant is a truck driver in *[particulars withheld]*, a transport company in Netherlands and the second applicant is a *[particulars withheld]* in Rabobank in Netherlands. The applicants have not been blessed with children for medical reasons. The applicants resorted to raising a family through adoption. The applicants expressed their wishes to Stichting Afrika, a foreign adoption agency which assessed and approved them to be favorable to adopt a foreign child. Their application was sent via Little Angels Network, a local adoption society and the same was approved by National Adoption Committee of Kenya sitting on 22nd of July 2014. The Ministry of Security and Justice confirmed that Netherlands recognizes inter-country adoptions made in the state that is a party to Hague Convention in their letter dated 15th July 2013. The Ministry of Security and Justice gave an assurance that a child adopted from Kenya will be granted citizenship once the adoption is effected.

Baby J B was abandoned at Kawangware Sokoni to one H W K. He was presumably born on 27th of March 2013. The matter was reported to Muthangari Police Station vide OB no. 29/1/8/13 and he was placed under care and custody of Abandoned Baby Centre in Dagoretti sub-county by the Children Officer on the 1st of August 2013. The Principal Magistrates Children's Court in Nairobi committed the child to Abandoned Baby Centre vide Protection and Care Case No. 328 of 2013 on 2nd of September 2013. The police traced the relatives of the child but all in vain. The child was declared free for adoption by Little Angels Network, an adoption society and a certificate no. *[particulars withheld]* was issued on the 30th of July 2014. The child was placed under the mandatory custody to the applicants vide foster care agreement form dated 20th November 2014. The court appointed C W. M-O as the guardian ad litem on the 26th of March 2015.

Reports were made by the guardian ad litem, Little Angels Network and the Director Children's Services prior the adoption hearing. The court evaluated the same and they were recommending the adoption. This being an international adoption, there are pre-requisites that have to be met before granting the same according to **section 162 of the Children's Act**. The first pre-requisite is the consent of the parents or relatives has to be sought. The court evaluated all the reports made by Little Angels Network and guardian ad litem respectively and they both confirm that the child was abandoned at Kawangware Sokoni to one H W K. The matter was reported to the police with OB No. 29/1/8/13. The police with their letter dated 26th of May 2014 confirmed that tracing of the relatives was done for six months but all in vain. For this case, 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 pre-requisite, the applicants were assessed by a foreign adoption agency Stichting Afrika, approved them to be favorable parents and can proceed to adopt a foreign child. The ministry of security and justice confirmed in their letter dated 15th July 2013 that Netherlands recognizes inter-country adoptions made in the state that is a party to Hague Convention. The Ministry of Security and Justice gave an assurance that a child adopted from Kenya will be granted citizenship once the adoption is finalized in Kenya. This signifies that the applicants have satisfied this condition.

The third pre-requisite was satisfied according to the reports made by the foreign adoption agency Stichting Afrika, guardian ad litem, and District Children's Services. The foreign adoption agency Stichting Afrika assessed the applicants and approved them to be emotionally fit and financially stable to adopt a foreign child. The applicants were approved by as favorable parents for adoption. The applicants have no criminal record according to the certificates the Dutch State Secretary of Security and Justice dated 29th November 2013. A home study by child welfare council through Stichting Afrika, Netherlands found them suitable, capable and willing to adopt. Locally the applicants were affirmed by the adoption agency, Little Angels Network and Adoptions Committee sitting on 22nd July 2014 vide certificate no. ***[particulars withheld]***.

During the home visits, the guardian ad litem observed that the child had bonded well with the applicants. The child has learnt how to communicate in Dutch. The applicants sought medical attention regarding the child's eye and it's now in good condition. He was in good care of the applicants and has had a positive growth socially, physically and emotionally. The guardian ad litem approved them to be fit and favorable to adopt the child and so was the Director Children's Services according to her report.

The court finds that the applicants have met the criteria of international adoptions and it would be in the child's best interest if he was adopted. 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 and shall give this court guarantee that the child shall be granted citizenship once adoption is finalized. Stichting Afrika, a foreign adoption society has guaranteed court that it shall carryout post adoption supervision and shall avail reports of the same for a period of three (3) years.

Adoption of the child is hereby granted to P J W F and J C M F, the applicants in this matter. The child shall be known as J B F. His date of birth shall be 27th March 2013 and the place of birth shall remain Kawangware.

He is presumed to be a Kenyan citizen by birth. Should any misfortune occur, the child's legal guardians shall be P J F and J C M S F. 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 5TH DAY OF JUNE, 2015

M. W. MUIGAI

JUDGE

In the presence of;

Ms Osoro holding brief for Mr. Ochieng Ogutu