



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 28 OF 2015 (O.S.)

AND

IN THE MATTER OF CHILDREN'S ACT, No. 8 of 2001

AND

IN THE MATTER OF P O

W A H1ST APPLICANT

AND

A S D G2ND APPLICANT

JUDGMENT

1. The applicants, W A H and A S d G are of Dutch citizenship and are in a monogamous marriage which was solemnized at the Civil Registry of Nijkerk in Netherlands on 13th April, 2004. They have no child of their own. They have brought an Originating Summons dated 28th January, 2015 seeking permission to adopt baby P O, an infant of female sex. W A H is a self-employed office Manager, while A S d G is a self-employed Accountant. They reside in *[particulars withheld]* Gardens, *[particulars withheld]* Apartments, Nairobi and are both Christians of the Catholic Church.
2. The child who is the subject of these adoption proceedings, was born at home on 1st April 2013 being underweight. She was admitted at Thika Level 5 hospital and placed in an incubator. On 7th April 2013, her mother, one H O abandoned her at the hospital. The matter was reported at Thika Police Station on 6th June 2013 and an entry was made to that effect vide OB 17/06/06/2013. The child was later admitted to Open Hand Children's Home for care and protection on 19th June 2013.
3. The child was officially committed to Open Hand Children's Home by the Senior Principal Magistrate Court Thika, on the same day. A letter dated 9th December, 2013 from Thika Police Station confirms that the biological parents of the child were not traced nor did anyone come forward to claim the child.
4. The child was declared free for adoption on 15th August, 2014 by the little Angels Network vide certificate No. *[particulars withheld]*. She was released into the custody of the Applicants for mandatory foster care pending adoption in 27th October 2014. Since then she has been in the continuous custody and care of the Applicants. Prior to the hearing of the adoption application, Little Angels Network, Adoption

Society prepared and filed a report in court.

5. The Adoption Society, guardian ad litem and the Director of Children's Services have all made home visits and established that the Applicants are medically fit, and are financially and emotionally capable of providing for the up keep and education of the child. The Director of Children's Services filed a report dated 8th May 2015 recommending the adoption for reasons that the child stands to gain from the opportunities provided by becoming the daughter of the Applicants, as opposed to living all her life in an institution. The guardian ad litem, M/s. J M M also filed a report that was favourable and recommended the adoption of the child by the Applicants.

6. I note however that the report of the Director Children Services observed that the abandonment of the child at Thika hospital was not reported in good time. Mr. Ogutu learned counsel for the Applicants told the court that Section 159 (1)(i) of the Children's Act provides that a child can only be presumed abandoned after six months. The said section provides as follows:

“The court may dispense with any consent required under paragraphs (a),(b), and (c) of subsection (4) of section 158 if it is satisfied that—

(a) in the case of the parents or guardian of the child, that he has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child:

Provided that—

(i) abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months.”

The delay in reporting was therefore not inordinate.

7. The report also noted that the committal warrant to Open Hand Children's home had no case number. The court gave the Applicants time to avail a copy of the committal warrant properly indicating the case number. On 3rd June, 2015 a proper committal warrant was duly availed indicating that the child was committed vide **Thika Children's Case No. 194 of 2013.**

8. This proposed adoption was approved by Stichting Afrika, Netherlands, a foreign Adoption Agency approved to make adoption arrangements in Kenya. They have also been cleared by Dutch State Secretary of security and justice Office who found them to have no criminal records. A letter dated 26th August 2010 from State Secretary of Security and Justice confirms that children that are mediated by Stichting Afrika from Kenya to Netherlands, acquire Dutch citizenship when the adoption is effected and valid in Kenya. The proposed adoption also received local approval from the Adoption Committee established in accordance with the Adoption Regulations 2005.

9. From the foregoing I am satisfied that all the legal requirements for an international adoption have been met, and consequently I make the following orders:

a) That the Applicants, W A H and A S d G, are hereby allowed to adopt the child, Baby **P O**, who shall be hereinafter known as **P L H**;

b) Her date of birth shall be presumed to be 1st April, 2013. She is presumed to have been born in Kenya and the place of birth shall be Thika.

c) Mr. R B D H and Mrs. E J V V D B (friends to Applicants) are hereby appointed the legal guardians of the child should the Applicants die or become permanently incapacitated before the child attains the age of majority.

d) The Registrar-General is directed to enter this adoption order in the Adoption Register;

e) The Director of Immigration is hereby authorised to issue the child with a Kenyan passport.

The guardian ad litem is hereby discharged.

It is so ordered.

SIGNED DATED and **DELIVERED** in open court this **5TH** day of **JUNE, 2015**.

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L. A. ACHODE

JUDGE