



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
ADOPTION CAUSE NO. 8 OF 2015
IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY DJM.

JUDGMENT

INTRODUCTION

1. By Originating Summons dated 2nd March 2015, the joint applicant spouses of German nationality seek an order that they be authorized jointly to adopt Baby DJM; that the child's name upon adoption be DJB; and that the Registrar General be directed to make the appropriate entries in the Adopted Children's Register, as provided for under section 170 of the Children Act.

JURISDICTION TO MAKE AN INTERNATIONAL ADOPTION ORDER

2. Pursuant to section 162 of the Children Act –

“162. An adoption order may be made in respect of a child upon the joint application of two spouses who are not Kenya citizens and not resident in Kenya (in this Act referred to as an “international adoption”) if they—

(a) have obtained the consents specified in paragraph (e) of subsection 4 of section 158; and

(b) have satisfied the court that the country where they ordinarily reside and where they expect to reside with the child immediately after the making of the adoption order will respect and recognise the adoption order and will grant resident status to the child; and

(c) have been authorised and recommended as persons who are suitable (including being morally fit and financially capable) to adopt a foreign child by a competent government authority or court of competent jurisdiction in the country immediately after the making of the adoption order. ”

3. Under section 163 of the Children Act, the court before making an order of adoption is required to satisfy itself of certain matters as follows:

“163. (1) The court before making an adoption order shall be satisfied—

(a) that every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for

which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(b) that the order if made will be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child, and to the ability of the applicant to maintain and educate the child;

(c) that the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;

(d) that any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;

(e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of the child has expressed willingness to do so; and

(f) that both the applicant and the child have been assessed and evaluated by a registered adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court.”

4. Finally, the court on making an adoption order has further power to appoint a guardian for the child as provided for under section 164 of the Children Act as follows:

“164. (1) The court at the time of making an adoption order may upon the application of the adopter, or of its own motion or in the case of applicants for an international adoption shall appoint any person approved by the adopter and whose prior consent thereto has been given in writing to be the guardian of the child in the event of the adopter, or both of the adopters where two spouses have applied for the adoption order, dying or becoming incapacitated before the child is of full age.

(2) The court may, at any time before the child is of full age, on the application of the adopter, or of the guardian appointed under subsection (1) or of the child, revoke such appointment and appoint any other person to be the guardian of the child.”

THE CHILD

5. The Child named DJM is 6 years 11 months (DOB 30th July 2008) old African male child who was abandoned by his mother JW at Fatima Health Centre upon birth, according to police records Occurrence Book (OB) 63/3/10/2011 Ongata Rongai Police Station, and committed into the care, initially, of Fatima Children’s Care and Nutrition Centre and, subsequently, T B House by an order of the Children Court, Nairobi in Case No. 240 of 2014 made on 20th August 2014. Final letter by the police dated 30th May 2014 confirmed that the child had not been claimed. The child was declared free for adoption by the Kenya Children’s Homes Adoption Society Case Committee on 10th September 2014 and placed with the applicants on 2nd December 2014.

THE PROSPECTIVE PARENTS

6. The applicants are spouses of Christian faith, citizens of Germany both certified to be medically fit with no criminal record and aged 51 and 50, respectively. They are both employed as self-employed Script writer cum television journalist and Personnel Development Consultant, respectively, and they have reasonable income and other assets including their own home. They have appointed legal guardians who have consented to take care of the child in the event of death or incapacity of the applicants.

7. The applicants have executed the **Undertaking by Adopters – Foreign Adoption** under the 11th Schedule of Children Act and the organization **Eltern fur Afrika e.V.** has given an **Undertaking by Foreign Adoption Society** under 12th Schedule to make follow up supervisions with reports to local adoption society for a period of three years from the date of arrival in the receiving country.

CONSENTS AND APPROVALS

8. The consent of the biological parents of the child is waived under section 159 of the Children Act in the circumstances of the case and the applicants have demonstrated approvals by the German Government through the Centre Bavaria Family and Social Affairs Bavarian State Youth Welfare Office dated 12th August 2013 and the Kenya Adoption Committee on 17th June 2014 for their adoption of the child.

POST-ADOPTION STATUS OF THE CHILD.

9. The applicants have demonstrated that the child will upon an Adoption Order acquire German citizenship and therefore be granted resident status in Germany where the applicants reside, in accordance with section 6 of the German Nationality Law.

STATUTORY REPORTS

10. The Guardian *ad litem*, E N, the Kenya Children's Homes adoption society and Mr. Zephaniah Apoko, Sub-County Children's Officer, Msambweni on behalf of the Director of Children Services, have filed reports respectively dated 29th April 2015, 10th March 2015 and 12th June 2015 on the proposed adoption all of which were positive in recommending the adoption to be in the best interest of the child.

OBSERVATIONS AND FINDINGS OF THE COURT

11. The Court heard the testimony of the applicants, the guardian *ad litem* and the representative from the Kenya Children's Homes adoption society, Ms. Diana Kaisha, and the Children's Officer, Msambweni sub-County as well as observed the child in court and its relation with the applicants. From its own observation, the Court agreed with the reports of the guardian, the adoption society and the Children Officer that the child had bonded well with the prospective parents.

12. Specifically, I noted that the child was well-groomed and cheerful. The court also noted the applicants' expressed feelings of joy and blessings in having the child and the importance they placed on the adoption, which the male applicant referred to as "God's match" as well as the support expressed by members of the applicants' extended family, some of whom had visited the applicants in Kenya.

13. Finally, the Court was impressed by the admirably positive attitude of the applicants in dealing with possible racial discrimination of the African child in Germany with the male applicant testifying that "*I will make [the child] understand that there is nothing wrong with him and that it is the others [who discriminate against him] who are wrong.*" Well said!

BEST INTERESTS OF THE CHILD

14. The child who was abandoned by his mother clearly requires a home with loving and caring parents. Having found that the applicants are suitable and able to provide for the needs of child, among others, loving care, a home, maintenance and education, and having considered the positive relevant statutory reports that the child has bonded with applicants' family, the court determines that the best interest of the child must lie in the continued life as a member of the applicants' family.

15. Accordingly, I find that it is in the **best interests of the child**, to allow the adoption so that she is provided with a family, a home and the loving care of the applicants, and with whom she has clearly bonded as a child to her parents and who appear eager to do the exact same thing that the child so much needs.

ORDERS

16. Accordingly, the final orders in Originating Summons dated 2nd March 2015 are granted as prayed.

17. The Orders of the Court will issue in the full names of the applicants and the child.

DATED SIGNED AND DELIVERED THIS 1ST DAY OF JULY 2015.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

Ms. Kipsang for the Applicants

Linda - Court Assistant.