



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
ADOPTION CAUSE NO.155 OF 2015 (O.S)
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 2001
AND
IN THE MATTER OF BABY J N ALIAS J H (CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR ADOPTION BY
BJAMS
JUDGMENT

1. The applicant is a 45 year old Dutch national. She is a teacher by profession and has one biological daughter. She filed originating summons dated 15th June 2015 seeking to be allowed to adopt Baby J N alias J H.
2. Baby J N alias J H is estimated to have been born on 21st September 2013. He was reported to have been abandoned by his biological mother E W who was being accommodated at the time by one A C in Limuru. She had moved from Molo due to the post election skirmishes. A reported that she went out shortly only to come back and find the child abandoned by its mother. She took the child to her mother in Chuka without informing the relevant authorities. She was apprehended by the police to explain how she got the child and the whereabouts of its mother. The incident was booked under O.B No. [particulars withheld]. The child was referred to New Life Home Trust in Nyeri by the Meru South Children's office. On 4/12/2013 he was formally committed to the said Home by the Principal Magistrate's court at Chuka vide Care and Protection Case No.10 Of 2013. He was later transferred to the Newlife Home Trust in Nairobi. The Home reported that the child remained unclaimed for more than 6 months and still remains unclaimed to date. The Police through their final letter dated 31st July 2013 stated that no one had come to claim the child and efforts to trace the child's relatives have been futile. The child was declared free for adoption as per **section 156 of the Children Act** on 10th December 2014 by the Little Angels Network and certificate serial No.[particulars withheld] issued to that effect. He was placed under the applicant's care and protection on 15th March 2015 for mandatory fostering prior to adoption and has been under the applicant's care to date.

3. The court appointed a guardian *ad litem* M M M ordered that she as well as the Director of Children's Services file their respective reports within 45 days thereof. She filed her report recommending that the applicant be allowed to adopt the child as she is socially, emotionally and financially stable and that the child has bonded well with her. The Director of Children's Services has, however, not filed his report, having refused to accept service of the court's order directing him to do so. He informed the process server that they no longer deal with international adoptions following a directive from the Principal Secretary of the Ministry of Labour, Social Security and Services. The Principal Secretary had communicated a **“Moratorium on Inter-Country Adoption of Kenya Children”** that was declared on 27th November 2014 by the Cabinet. In a case similar to this one, this court in its ruling dated 15th July 2015 dispensed with the Director of Children's services report stating that,

“The Act does not specifically provide for the report that the court sought from the Director of Children's Services in the order..... However, there has been a long-standing practice that before an international adoption order is made the Director will conduct an inquiry regarding the suitability of the applicant to adopt and file a report. This is really superfluous, in view of the approval by the Adoption Committee which is housed in this Ministry, and the fact that the Director is the Secretary to the Committee. But this has been found to be necessary precaution given that under section 38 of the Act the Director is the one charged with the function of safeguarding the welfare of children.” (Adoption Cause No. 123 of 2015).

4. I note that the applicant was approved by the Kenya National Adoption Committee as being a suitable adoptive parent and approval certificate dated 21st October 2014 to that effect issued. This being an international adoption, the applicant has obtained and filed the following reports from her home country on her suitability to adopt as required by **section 162** of the **Children Act**:-
 - a. an undertaking by Stichting Afrika, a Dutch adoption agency licensed to carry out adoptions in Kenya, confirming that a Kenyan adoption order will be respected and recognized in Netherlands;
 - b. a report from the Ministry of Security and Justice, Arnhem Branch dated 27th November 2013, confirming her suitability as a prospective adoptive parent;
 - c. statement from the Ministry of Security and Justice confirming that she is permitted to adopt a foreign child and confirming that the adopted child will be authorized to enter and reside permanently in Netherlands.
5. This court is of the opinion that it is in the best interests of the child to be adopted by the applicant. The applicant has demonstrated her ability to provide a conducive home and family environment to enable the child grow and develop. She shall assume all parental rights and duties of the biological parents of the child, once adopted and shall treat the child as if he was born to her. She has 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 her property. The applicant shall not be able to give up the child owing to any subsequent unforeseen behaviour or other changes in the child.
6. Having been satisfied that all the legal requirements for international adoption under **section 162** of the **Children Act** have been met, the following orders shall issue:-
 - a. the applicant B J A M S is hereby allowed to adopt baby J N alias J H who shall henceforth be known as J H S;
 - b. the child's date of birth shall be 21st September 2013, and shall be presumed Kenyan by birth having been abandoned at Limuru in Kenya;
 - c. S E-S and her husband R E are appointed legal guardian to the child in the event of death or incapacity of the applicant before he is of full age and fully self-reliant;
 - d. the Registrar General is directed to enter this adoption in the Adoptions Register;
 - e. the Director Of Immigration Services is hereby ordered to issue J H S with a Kenyan Passport; and

f. the guardian *ad litem* is hereby discharged.

DATED and DELIVERED at NAIROBI this 15th October 2015.

A.O. MUCHELULE

JUDGE