



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 4 OF 2014

IN THE MATTER OF: CHILDREN'S ACT OF 2001

AND

IN THE MATTER OF: C B – A CHILD

IN THE MATTER OF: AN APPLICATION FOR ORDERS OF
ADOPTION OF THE MINOR C B BY A L AND K S THE JOINT
APPLICANTS

BETWEEN

A L

K S.....JOINT APPLICANTS

AND

LITTLE ANGELS NETWORK.....RESPONDENT

JUDGMENT

By way of an originating summons dated 28th February, 2014 the Joint Applicants namely A L (hereinafter referred to as the 1st Applicant) and K S (hereinafter referred to as the 2nd Applicant) seek the following orders:

- “1. Pursuant to the provisions of SECTION 159 OF THE CHILDREN ACT 2001, this Honourable court be pleased to dispense with the requirement of the consent to the Adoption as required by SECTION 158 OF THE CHILDREN ACT, 2001.**
- 2. The Applicants A L and K S be authorized to adopt C B a child.**
- 3. Upon the making of the adoption order the child be known as C B S L.**
- 4. Upon the making of the adoption order, The Registrar General do make an entry recording the adoption and the date of birth of the child as 25th October, 2011 in the Adopted Children Register as provided for by SECTION 170 OF THE CHILDREN ACT 2001.**

6. The costs of this application be costs in the cause.”

On 19th March, 2014 the court approved the appointment of **MS. F M** as the ‘*Guardian ad litem*’ in the matter. The parties thereafter appeared before the court on 9th April, 2014 for a *vive voce* hearing of the Adoption application. In view of the fact that the two applicants are both foreign nationals seeking to adopt a Kenyan child the Law in Kenya as well as the “**Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption**” will apply. Section 156(1) of the Children Act 2001 of Kenya provides

“No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”

The subject child’s date of birth has been given as 25th October, 2011. He was therefore aged about 2 ½ years old when this application for adoption was filed. He was therefore well over the six week age limit prescribed by the Children Act. I have seen annexed to the originating summons a certificate serial number [Particulars withheld] dated 17th July, 2013 declaring the child ‘*free for adoption*’. This certificate has been issued by the Little Angels Network which is a registered adoption agency in Kenya. I have also seen the Approval Certificate for an Individual Foreign Adoption issued by the National Adoption Committee which approval is dated 18th September, 2013. This being an International Adoption section 162(c) of the Children Act requires that the applicants obtain consent to adopt from a competent Government authority in the country in which they ordinarily reside. This condition has been met by way of the letter dated 10th October, 2012 from the Regional Office for Children Youth and Family Affairs in Southern Norway, which office has granted to the applicants approval to adopt a child aged 0-3 years. The letter further confirms that an adoption order made in Kenya will be held as valid in Norway thereby fulfilling the requirements of section 162(b) of the Children Act. I am satisfied that all the prerequisites for a foreign adoption have been met and that this application is properly before the court.

THE APPLICANTS

The 1st and 2nd applicants are both citizens of Norway. They are a married couple. The copy of their marriage certificate confirms that the couple got married to each other on 24th September, 2005 in the municipality of Carpignano Salentino (le) in Norway. The applicants both appeared before me in chambers and gave oral evidence in support of their application to adopt a child. They informed the court that they reside in Tonsberg, Norway in their own home and both are in stable employment. The 1st applicant works as a creative Director in an Advertising firm whilst the 2nd applicant who is a designer runs her own business. During the course of their marriage the couple have been unable due to medical complications to bear a child together. They therefore opted for the alternative of adoption. I have carefully examined all the material made available to me respecting the applicants. I have carefully perused the in-depth Social Enquiry Report prepared by The Child Welfare Service of the Tonsberg District Council. I found the said report to be both thorough and incisive. It indicates that both applicants had a stable childhood and a normal upbringing each in a loving family environment. They both maintain close ties with parents and siblings. The applicants are both educated to college level and as stated earlier both have stable jobs. Their medical reports indicate that they are both of sound physical and mental status. There is nothing that would hinder their ability to raise a child. I have also perused their financial records which show that they earn sufficient income to enable them provide for the needs of the child. In any event like all other Norwegian children the child will upon adoption be entitled to education at state expense. I note that police records indicate that neither applicant has a criminal record. They are both upstanding citizens. Upon examination by the court the applicants confirmed that they both understood and were ready to accept the obligations that fall upon them as adoptive parents. They expressed their intention to treat the child as if he were their very own. Indeed the applicants have already taken the child into their custody and have been living with him in a rental apartment in Diani. Their commitment to this process cannot be doubted. They both undertook a period of counseling in Norway to prepare them for the process of adoption. They have spared no expense and time to travel over thousands of miles to adopt a child. I have no doubt that they have a genuine desire to provide a child with a loving home. I

have looked at the annexed photographs which show that the applicants live in a spacious well appointed home with adequate space and facilities for the child. The applicants struck me as a mature and loving couple who were fully alive to the realities of raising an adopted child. In my view they are suitable adoptive parents.

THE CHILD

The child whose given name is 'C B' was estimated to have been born on or about 25th October, 2005. He was found abandoned on 19th April, 2012 at a café in Luanda Town in Western Kenya. The owner of the café and his worker rescued the child at about 5.00 a.m. and reported the matter to Luanda police station. The child was placed at PEFA Rehema Children Home in Bukura through a care and protection order issued by the court in Maseno. The child was healthy and has been fully immunized. He was matched to the applicants who met him a couple of times and thereafter he was placed in their custody under a fostering agreement on 5th November, 2013. From that time the child has been living with the applicants at their rented apartment in Diani.

No information is available about the birth mother of the child or about any other relative. The child was abandoned near a hotel no doubt in the hope that he would be rescued and taken to a place of safety. To date no person has come forward to claim him. A letter from Luanda police station dated 24th June, 2013 confirms that police have been unable to trace any relative of their child. That being the case I find that there exists no known person from whom consent for this adoption can be sought and/or obtained. I therefore waive the requirement for consent in line with section 159(1)(a) of the Children Act.

THE APPLICATION

The applicants seek to adopt the child and provide him with a home. Section 4(a) of the Children Act 2001 obliges a court to give priority to the **best interest** of the child. I have carefully perused the Home Report prepared by the Children's Department as well as the report filed by the *Guardian ad litem*. Both indicate that since coming into the custody and care of the applicants the child has flourished and is doing well. He has adapted both to his new home and to his new parents. It was evident to me when I observed them together that the child has bonded well with the applicants. He views them as his parents. To remove him from their custody at this stage would be to visit unnecessary trauma on the child. The child was abandoned by his mother and he only faced an uncertain future in a children's institution. This adoption provides him with an opportunity to be raised in a home environment with loving parents and family. In my view this certainly serves the child's 'best interest'. I therefore authorize the adoption of this child by the two applicants. I grant prayers (1), (2), (3) and (4) of the originating summons dated 2th February, 2014. I make no order on costs.

Dated and delivered in Mombasa this 2nd day of May, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Njoroge for Applicants

Court Clerk Mutisya