



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ADOPTION CAUSE NO. 3 OF 2014

IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF B W A CHILD

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF THE MINOR B W BY
G M R AND C O R THE APPLICANTS

BETWEEN

G M R

A C O R.....APPLICANTS

AND

LITTLE ANGELS NETWORK.....RESPONDENT

JUDGMENT

By way of an originating summons dated 27th February, 2014 **G-M R** (the 1st Applicant) and **A C O R** (the 2nd Applicant) jointly pray for orders that

“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 the provisions of SECTION 158 OF THE CHILDREN ACT, 2001.

2. The Applicants G-M R and A C O R be authorized to adopt B W, a child.

3. Upon the making the adoption order the child be known as J R R.

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 6th September, 2010 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 appointed F N as ‘Guardian ad litem’ for this matter. The application was disposed of by way of oral evidence. Both applicants appeared before me and testified on 9th April, 2014. Since both applicants are citizens of Norway who are seeking to adopt a Kenyan child this quantifies as an International Adoption. As such the application will be determined on the basis of the Children Act, 2001 of Kenya as well as the “**Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption**”. Section 156(1) of the Children Act 2001 of Kenya provides that

“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.”

In this case the subject child was born in September, 2010 and the application to adopt him was filed in February, 2014. He was therefore about 3 ½ years old well above the six week age limit prescribed by the Act. I have also seen annexed to the application a certificate dated 13th March, 2013 serial number 001234 declaring the child free for adoption. The certificate was issued by the Little Angels Network which is a registered Adoption Agency. I have also seen annexed to the application a certificate dated 18th September, 2013 issued by the National Adoption Committee of Kenya granting the applicants approval to adopt one child. Section 162(c) of the Children Act requires that the applicants have been authorized and recommended as persons suitable to adopt by a competent Government authority in their country of residence. In this regard I have seen an approval to adopt issued to the applicants issued by The Regional Office for Children Youth and Family Affairs of Western Norway. This approval is dated 3rd December, 2012. I am therefore satisfied that all the legal prerequisites for this application have been complied with and that this application is properly before the court.

THE APPLICANTS

The applicants are a married couple both holding Norwegian citizenship. Their status as a married couple is confirmed by their annexed copy of marriage certificate which indicates that the two wed at the Royal Norwegian Embassy in Rome, Italy on 22nd March, 2007. Despite having lived as a couple since 2007, the applicants have been unable due to medical complications to bear a child of their own. After undergoing several attempts at IVF all of which failed they decided to go the route of adoption. Their commitment to this process is evidenced by the fact that they have travelled all the way to Kenya in order to seek a child to adopt. Both applicants have taken time off their professional careers to stay in Kenya for several months in order to see this process through. Their commitment to this decision is further evidenced by the fact that they both voluntarily underwent an Adoption Preparation course for first time adoptive parents organized by the Directorate for Children Youth and Family Affairs in their home country. The certificate of participation in this course dated 16th October, 2011 is annexed to the application. I am persuaded therefore that the couples decision to adopt a child is not a mere passing fancy. It is clearly a decision which they have given much thought. The preparation course would undoubtedly have given them a realistic view of the joys, sorrows, risks and expectations arising from adoption.

As stated earlier both applicants appeared before me and gave oral evidence in support of the application. Both are mature people aged over 40 and both are professionals with stable careers. The 1st applicant is an IT Project Engineer whilst the 2nd applicant who is a medical doctor works as a senior physician at Haukeland University Hospital. It is gratifying to note that both applicants have background training which will be beneficial in providing the special skills needed to raise a child. The 1st applicant is trained as an auxiliary nurse whilst the 2nd applicant being a trained psychiatrist is well placed to handle any psychological issues that may arise with the child.

There is evidence that the applicants both make a good living. Indeed their yearly earnings are well above average. Their bank statements attest to their sound financial status. They own their own home in Bergen Norway. The annexed photographs show it to be a spacious, well furnished house with adequate

land and compound, certainly conducive for raising a young child.

In assessing the background and antecedents of the applicants I have made reference to the Social Enquiry Report prepared by the Asane Child Welfare Service. Both the 1st and 2nd applicants had a normal upbringing and were raised in stable families with both parents present. They each have siblings with whom they have retained close ties. The family members have given support to the applicants in their quest to adopt a child which is proved by the fact that some family members have even travelled to Kenya to meet the child and to provide moral support to the couple. Both applicants are Christians being adherents of the Church of Norway. Police records issued by the Chief of Police in Hordaland, Norway indicate that neither applicant has a criminal record. I find nothing adverse or that would cause concern in the background of the applicants. I did observe the two when they appeared before me. They struck me as a mature and loving couple who were certain of their decision. The applicants both confirmed that they fully understand and accepted the obligations that they would derive from an adoption order. They were ready to treat the child as their very own. They confirmed that the child would upon adoption be entitled to Norwegian citizenship and that he would be entitled to education and medical care at state expense. From the above analysis I find that both applicants are suitable as adoptive parents. They have both the means and the desire to adopt a child into their family.

THE CHILD

The subject child whose given name is 'B W' is a boy aged about 3 ½ years old. He was estimated to have been born around 6th September, 2010. On 7th September, 2010 at the age of one day old the child was found placed in a polythene paper bag and abandoned at a dumping site in Kiandutu, Kiambu County. He was rescued and the matter reported to Thika police station. On 16th December, 2011 the child was committed into the legal custody of Children Karibuni Organization Thika by the Resident Magistrate's Children's Court in Thika. It is here that he remained until November, 2013 when the applicants met him. On 11th November, 2013 the child was handed over to the applicants under a fostering arrangement.

This is a child who was abandoned immediately after birth. His mother was clearly unable and/or unwilling to care for him. So far almost four (4) years after his birth no person has come forward to claim him. No relative of the child has been traced. A final letter dated 30th April, 2012 from the Officer Commanding Thika Police station indicates that all efforts to trace the biological mother of the child have failed. There is therefore no known person from whom consent can be sought and/or obtained. I am satisfied that the child was indeed free for adoption and in view of his abandonment I hereby waive any requirement for a consent in line with section 159(1) of the Children Act, 2001.

THE APPLICATION

Section 4(a) of the Children Act 2001 obliges a court in considering whether or not to allow such an application, to give **priority** to the **best interest** of the child. This is a young boy who was abandoned at birth. His mother remains unknown. Upon rescue he was placed in a children's home. At best he faced a future in an institution where he would lack parental care and love. The applicants have expressed a desire to provide the child with a home. He has been in their custody and care since November, 2013. The child has bonded with the applicants and now is able to utter a few words in Norwegian. It was clear from my observation that the child now regards the applicants as his parents. I have carefully perused the report filed by the *Guardian ad litem* on 8th April, 2014 as well as the Home Report dated 4th April, 2014 prepared by the Children's Officer in Msambweni. Both visited the family at the Amani Luxury Villas in Diani where they are currently staying. During these home visits it was observed that the applicants were hands-on parents and it was observed that the child had fully bonded with them. This adoption offers this child a chance to be raised in a stable family environment with loving parents just like other children. This in my view is certainly in the best interest of the child. I therefore do hereby authorize the adoption of this child by the two applicants. I further grant prayers (1), (2), (3) and (4) of the originating summons dated 27th February, 2014. I make no order as to costs.

Dated and delivered in Mombasa this 5th day of May, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Njoroge for Applicant

Mutisya Court Clerk