



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 1 OF 2014

IN THE MATTER OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF ADOPTION OF B M T

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF THE MINOR BABY M
T BY K A T L AND K T L

BETWEEN

K A T L

K T L.....APPLICANTS

AND

LITTLE ANGELS NETWORK.....RESPONDENT

JUDGMENT

The two applicants herein namely **K A T L** (hereinafter referred to as the 1st Applicant) and **K T L** (hereinafter referred to as the 2nd Applicant) have jointly filed this originating summons dated 25th February, 2014 seeking the following orders

- “1. **THAT** the applicants **K A T L** be allowed to adopt Baby **M T** the child and the said child to be called **M T L** henceforth.
2. **THAT A T E** and **S T E** of Post Office Box Number Lauvasveien [Particulars withheld] Satre be appointed guardian to the child herein in the event that the adopters die or become incapacitated before the child attains full age.
3. **THAT** the consent of the biological parents of **M T** be and is hereby dispensed with since the child was found abandoned.
4. **THAT** the Registrar-General be and is hereby ordered to make the appropriate entries in the

Adopted Children's Register in respect of baby M.T.

5. The costs of this application be costs in the cause."

The application was disposed of by way of *vive voce* evidence. On 5th March, 2014 the court approved the appointment of **MS. M N** as '*Guardian ad litem*' in the matter. The applicants in this case are both citizens of Norway who are seeking to adopt a Kenyan child. As such this qualifies as a '*foreign adoption*' and the laws pertaining thereto must apply. This includes 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

"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 whose name was given as '**M T**' was on 19th December, 2011 assessed by **DR. ALFRED SHIROYA** a Consultant Paediatrician who estimated his date of birth to be 24th November, 2011. Thus the child was roughly three (3) years old when this application to adopt him was filed in court.

I have seen annexed to the application a certificate serial number [Particulars withheld] dated 7th November, 2012 issued by the Little Angels Network which is a registered adoption agency in Kenya declaring the child free for adoption. I have also seen an Approval for an Individual Foreign Adoption Application issued to the two applicants by the National Adoption Society in Kenya. Section 162(c) of the Children Act, 2001 requires that any foreigner(s) seeking to adopt a child in Kenya must have been '*authorized and recommended as suitable*' to adopt a foreign child by a competent government authority or by a court of competent jurisdiction in their home country. In this regard I have seen the approval and recommendation issued to the applicants to adopt a child from Kenya issued by the **Regional Office for Children Youth and Family Affairs of Southern Norway**. I am satisfied that all the legal prerequisites for this application have been met and that the same is properly before the court.

THE APPLICANTS

The applicants are a married couple both of whom hold Norwegian citizenship. Proof of their marriage is provided by their annexed copy of their certificate of marriage issued by the office of the City Recorder of Oslo which indicates that the two celebrated their union on 12th September, 2009 in Oslo Norway. Despite having been married from the year 2009 the two have been unable to bear any child together. They attempted artificial means of fertilization to no avail and have now decided upon the option of adoption. From the Social Enquiry Report I do note that the 1st applicant was previously married but divorced his first wife in 2003 before he met and married the 2nd applicant. The 1st applicant has two children from his previous marriage a boy and a girl aged 18 years and 16 years respectively.

In order to gain some insight into the life and background of the two applicants I have very carefully perused the Social Enquiry Report prepared by The Child Welfare Service of Harum District. The report is dated 21st February, 2013. It reveals that both applicants had a normal upbringing in loving and close-knit families. The 1st applicant was born and raised in Oslo the capital of Norway whilst the 2nd applicant was born and raised in the city of Aros. They both are educated to university level and are both professionals. Each of the applicants has maintained close ties with their parents, siblings and grandparents and visits them often. They told the court in their testimonies before me that the extended family have all welcomed their decision to adopt a child and do provide much encouragement to the two. The children of the 1st applicant from his previous marriage have retained close ties with the couple and visit them often and the two children H and M have both written a letter dated 22nd March, 2013 indicating

their consent to the adoption and their willingness to welcome a new child into the family.

As stated earlier both applicants are professionals. The 1st applicant works as a Sales Manager with a firm known as [Particulars withheld] whilst the 2nd applicant is a Senior Nurse, a career which will no doubt be beneficial to the task of raising a young child. They both earn a good living and their annexed bank records show that they have more than sufficient funds to provide for the child. The couple live in their own home in Seder in Norway. I have seen the annexed photographs of the couple in their home. It is a neat, well appointed home with sufficient space and facilities to accommodate the child. Police records from the Sonare Buskerud chief of police indicate that neither applicant holds any criminal record. The 1st applicant did admit in his interview in Norway that he was involved in a motor vehicle accident but this incident did not involve drugs or alcohol.

As stated earlier both applicants were interviewed by me in my chambers. They confirmed that they fully appreciated the obligations that would arise from an adoption order. They confirmed their willingness to treat the child as their own biological child. Both signed the undertaking confirming that they were aware that an adoption order if given would be permanent and cannot be recanted. They have indicated their willingness to allow follow-up visits by the Adoption Society in Norway and the filing of regular reports in Kenya on the progress of the child. It has been confirmed that an adoption order made by a court in Kenya will have full effect and validity in Norway and that such an order will entitle the adopted child to acquire full Norwegian citizenship with all the right appertaining thereto. It is clear to me that the applicants are committed to their decision to adopt. They both voluntarily attended a preparation course for first-time applicants for adoption conducted by the Directorate of Children, Youth and Family Affairs in their country. They have expended much financial cost and time to pursue this goal. All in all they struck me as a loving and mature couple who were fully alive to the realities of their decision to adopt and who were motivated by a genuine desire to provide the child with a stable home. I am satisfied that they are both suitable as adoptive parents.

THE CHILD

The child known as 'M T' was estimated to have been born on or about 24th November, 2011. On 29th November, 2011 at the age of just five (5) days the child was found left and abandoned next to the laboratory department at the Kisumu East District Hospital. He was rescued by a nurse who worked at the out-patient department and was immediately admitted into the paediatric wing of the hospital. The incident was reported at the Kisumu police station. On 25th April, 2012 the child was committed into the legal custody and care of the New Life Home Trust in Kisumu by the Children Court in Winam. The applicants first met the child on 30th October, 2013 and thereafter made several visits to the home in order to bond with him. On 12th November, 2013 the child was placed into the custody of the applicants under a fostering agreement.

The biological mother and/or any other relatives of the child have not been traced despite all efforts of the police. Since the time that he was abandoned no person has come forward to claim him. By a letter dated 8th June, 2012 the Kisumu police confirm that all efforts to trace the mother of the child have been exhausted. It is quite clear that this child was indeed free for adoption. In addition there exists no 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, 2001.

THE APPLICATION

The applicants have come to court seeking authority to adopt the child. Section 4(a) of the Children Act obliges a court to give **priority** to the **best interest** of the child in making its decision on whether or not to allow the adoption. The child has been in the custody and care of the applicants since November, 2013. He has been living with them in an apartment in Diani. Home visits were conducted by the *Guardian ad litem* as well as by the Children Officer, Msambweni. The reports which I have perused are both favourable. They indicate that the applicants are both hands-on parents and that he was found at all times to be happy and playful.

The child was found to have bonded with the applicants. This was evident to the court when they appeared before me. The child looked healthy and obviously regarded the applicants as his parents. He was even able to communicate with them in Norwegian. This was a child who had been abandoned. He faced an uncertain future in Children's Homes and institutions. This adoption offers him a chance to be raised in a stable home environment with loving parents. This certainly advances the best interests of the child. I therefore authorize this adoption. I allow prayers (1), (2), (3) and (4) of the originating summons dated 25th February, 2014. No order on costs.

Dated and delivered in Mombasa this 9th day of May, 2014

M. ODERO

JUDGE

In the presence of:

Ms. Ngugi for Applicants

Mutisya Court Clerk