

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 127 OF 2014

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY F J - MINOR

L S J.....1ST APPLICANT

H E E.....2ND APPLICANT

J U D G M E N T

The applicants, L S J and H E E, are Danish citizens. They were married on 12th April 2006. The applicants have not been blessed with biological children of their own due to medical reasons. The 1st applicant is a Special Consultant and a Project Manager currently employed by the Danish Ministry of Taxation, Communications Department while the 2nd applicant is a Social Worker employed by Copenhagen Municipality, Social Welfare Department. The applicants desire to adopt a child, specifically a child from Kenya. In order to qualify to adopt a child from Kenya (in an inter-country adoption) in accordance with the Danish Adoption Laws, the applicants were assessed by the Adoption office of the State Administration for Greater Copenhagen. A report was duly prepared which is annexed to the application. The report is favourable and recommends the proposed adoption. The National Social Appeals Board, Division of Family Affairs of the Danish Ministry of Social Affairs and Integration confirmed by its letter dated 28th December 2012 that any decision rendered by this court in relation to the adoption of the child will be recognized by the Danish Government and which will issue Danish citizenship to the child. DanAdopt, Denmark, an international adoption society approved by the National Adoption Committee of Kenya recommends the adoption. The said National Adoption Committee sitting on 21st August 2013, approved the applicants' application to adopt a child from Kenya. A certificate to that effect was issued to the applicants on 18th September 2013.

Baby Fortune Jabali (the child) was born on 16th November 2010 at Thika Level 5 District Hospital. He was abandoned on 17th November 2010 at the Post Natal Ward by his biological mother when she absconded from the hospital. The identity of the mother was not established. The incident was reported to Thika Police Station. The Thika West District Children's Office was informed of the incident and managed to secure a temporary home placement for the child at Children Karibuni Organization, Thika where the child was admitted on 23rd November 2010 for care and protection. The Children's Court, Thika committed the custody of the child to the said Children's Home on 16th December 2011 pending adoption proceedings. The child was placed under the custody of the applicants on 7th February 2014 for compulsory foster care. Since then, the child has been under the custody and care of the applicants. According to the police, their effort to trace the biological parents of the child has been in vain. A report to that effect has been filed in court. This court therefore dispenses with the consent of the biological parents of the child to the proposed adoption by the applicants. Little Angels Network, an Adoption Society issued a certificate declaring the child free for adoption. The certificate is dated 20th November 2013.

The court read the reports prepared by Little Angels Network, the local adoption society, the State Administration for Greater Copenhagen Adoption Office, Denmark, the Director of Children's Services

and by M W M, the guardian ad litem. The court had the benefit of reading the reports prepared in Denmark in regard to the applicants' application to adopt a foreign child. The court also read the comments made by the National Social Appeals Board of the Ministry of Social Affairs and Integration, Denmark. All the above reports are favourable and recommend the applicants' application to adopt the child. This is an international adoption. There are certain conditions that the applicants must fulfill before this court can allow them to adopt the child. The first condition is that the applicants must be approved by the relevant adoption authorities in their country of origin. In the present case, the applicants have been assessed and approved by the relevant authorities in their country of origin, Denmark. This court had the benefit of reading the report prepared by the foreign adoption society. This court is satisfied that the applicants have been approved by the relevant authorities in Denmark to adopt a foreign child, and specifically a Kenyan child.

The second condition is that the applicants must be approved by the National Adoption Committee in Kenya to adopt a child in Kenya. The applicants have been assessed by the said National Adoption Committee. A certificate to that effect has been issued by the said committee approving the applicants' application to adopt a child from Kenya. The third condition is that the applicants must satisfy the court that they have fulfilled the legal requirements regarding the adoption, including having custody of the child for a sufficient period of time to enable bonding to take place. This period must not be less than three (3) months. It was clear to the court that the applicants have fulfilled all the legal requirements in respect to international adoptions. The applicants have had the custody of the child since 7th February 2014. In the period that the child has been in their custody, the child has bonded with them. This was evident from the reports prepared by the Director of Children's Services, the guardian ad litem and the local adoption society. The applicants have established that they have the financial and emotional capability to take care of the child.

Having evaluated all the reports on record, and the applicants' application seeking to be granted permission to adopt the child, it was clear to this court that it would be in the best interest of the child for the application for adoption to be allowed. The applicants have given an undertaking that they shall allow access to the approved adoption society in their country of origin to undertake post-adoption supervision for a period of three years from the time of the issuance of this adoption order. The applicants have executed an undertaking that if this court grants the adoption order, they will permanently assume all the parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if he was born to them in their marriage; they have been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that they shall adopt; that the child shall have the right to inherit their property; that an adoption order cannot be recanted, and further, that they shall not give up the child owing to any subsequent unforeseen behaviour or other changes in the child; that the adoption society in Denmark (foreign adoption society) shall provide annual follow up reports on the progress of the child to the adoption society in Kenya (local adoption society) for a period of three (3) years from the date of the arrival of the child in Denmark; that the applicants undertake to allow the representatives of the foreign adoption society in Denmark free access to the child at any reasonable time. The applicants further give an undertaking that they shall accord their citizenship to the child.

In the premises therefore, this court finds that the applicants have met the criteria set for international adoptions. The applicants, L S J and H E E, are hereby authorized to adopt baby F J. The child shall henceforth be known as A F S E. His date of birth shall be 16th November 2010. His place of birth shall be Thika Level 5 District Hospital, Thika, Kenya. He is presumed to have been born in Kenya. L L G, sister to the 2nd applicant is hereby appointed to be the legal guardian of the child should misfortune befall the applicants. The Registrar General is hereby directed to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 11TH DAY OF SEPTEMBER, 2014

L. KIMARU

JUDGE