



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADOPTION CAUSE NO. 21 OF 2014 (OS)
IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001
AND
In the Matter of Adoption of Baby A K
AND
IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY A K BY A
U K AND A L K THE APPLICANTS

JUDGMENT

The two applicants **A U K** (hereinafter referred to as the 1st Applicant) and **A L K** (hereinafter referred to as the 2nd Applicant) have filed this Originating Summons dated 26th August, 2014 seeking the following orders:

- “1. **THAT** the applicants **A U K** and **A L K** be allowed to adopt Baby A K alias A a male child and the said child to be known as **O A**.
2. **THAT** **N P-H F AND A M E F** of [particulars withheld] 53, 871 62 Hamosand, SWEDEN be appointed guardian to the said child in the event the adopters die or become incapacitated before he attains full age.
3. **THAT** the consent of the biological parents of the said child be dispensed with.
4. **THAT** the said child be presumed to be a Kenyan citizen born at [particulars withheld].
5. **THAT** the Principal Immigration officer be directed to issue the passport to the child when required to do so.
6. **THAT** the Registrar-General makes the appropriate entries into the Adopted Children’s Register.

The application was heard by way of vive voce evidence. On 10th September, 2014 the court appointed **MS. G W** as *Guardian ad litem* in this matter.

Section 156 (1) of the Children Act 2001 provides as follows:

“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 is believed to have been born on 5th August, 2012. He was therefore about two (2) years old when this adoption application was filed in court. Annexed to the application I have seen a certificate serial No. [particulars withheld] dated 15th November, 2013 declaring the child Free for Adoption. This certificate is issued by the Kenya Children’s Home Adoption Society which is a registered Adoption Society in Kenya.

The applicants who both testified in this matter on 15th October, 2014 are both Swedish citizens seeking to adopt a Kenyan child. This is therefore what is commonly termed an International Adoption. As such it will be guided by the Children Act of Kenya as well as the *Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoptions*. Section 162 (c) of the Children Act provides that any applicant in such a foreign adoption must “*have been authorized and recommended as persons who are suitable (including being morally fit and financially capable) to adopt a foreign child by a competent government authority or court of competent jurisdiction in the country.....*” In this regard I have seen the certificate dated 31st May, 2013 issued by the Social Welfare Committee of The Swedish National Board of Health and Welfare, granting to the two applicants permission to receive a foreign child for adoption. Similarly The National Adoption Committee of Kenya did issue an Approval certificate for this foreign couple to adopt a child from Kenya. The certificate is dated 25th February, 2014. Finally on these preliminary points the organization known as **Children Above All Adoptions Sweden** has issued its undertaking that any adoption order made by a Kenyan court will be upheld and given effect in Sweden and further confirm that a child so adopted will gain resident status in Sweden. An annexure of the Act on Swedish citizenship confirms that a child under the age of twelve years who is adopted by a Swedish citizen will become a Swedish citizen on adoption. I am satisfied that all the legal prerequisites for this adoption have therefore been met.

THE APPLICANTS

The applicants are a Swedish couple who got married to each other in the Church of Sweden on 21st August, 2004. The couple reside in a town called [particulars withheld] in Sweden. They have no biological child of their own but they have a son named ‘J M’ aged 5 years who was also adopted from Kenya. I have carefully perused the investigative report prepared by the Social Welfare Authority in the Municipality of [particulars withheld] in Sweden relating to the applicants. The report indicates that both applicants had a normal upbringing in stable family units. They each retain close ties to their parents and siblings who are supportive of their intention to adopt a second child. The applicants met and became friends in university. They later got married. Several families in their community have annexed letters of recommendation.

The applicants are both in stable careers. The 1st applicant is a biologist and works as an environmental analyst at the [particulars withheld]. The 2nd applicant on her part works as an environmental consultant with [particulars withheld] of Sweden. Their annexed bank records show that the couple are financially stable and certainly have sufficient income to provide for a second child. An enquiry with the Swedish police revealed that neither applicant has a criminal record. They live in their own home in the countryside with sufficient space and facilities to provide for both children.

As stated earlier the applicants are not first time parents. They already have one son ‘J M’ adopted from Kenya. The report indicates that this elder child has adapted well to his new surrounding in Sweden. He was found to be healthy and well cared for and the applicants have already enrolled him in a nearby pre-school. There is nothing to indicate that the applicants will not provide equally good and loving care to the subject child.

The applicants did both appear before me in court. They both confirmed that they fully understood the legal obligations arising from an adoption order. They expressed their desire to expand their family by

adopting a sibling for the elder son. They confirmed that their elder son has fully adapted to the life in Sweden. My own impression was that the applicants were a mature couple in a committed marriage who have a genuine desire to provide this child with a home. They have both taken time off their busy careers to travel to Kenya in order to achieve this goal. In my view they are both suitable as adoptive parents.

THE CHILD

The subject child is named 'A'. He was estimated to have been born on 5th August, 2012. The child was abandoned in the house of a good Samaritan named T M M in [particulars withheld] on 10th April, 2013. This lady stayed with the child for about one month and then reported the abandonment to Athi River police station. Thereafter the child was admitted for care to the Thomas Barnardo Children Home on 8th May, 2013. From that time to date no person has come forward to claim the child. The woman in whose house the child had been abandoned could not be traced through the telephone contacts which she left with the police. A letter dated 7th May, 2013 from the OCS Athi River police station confirms that police efforts to trace the child's parents have failed. As such I find that this child having been abandoned was indeed free for adoption. Since the child was abandoned there is 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) Children Act.

Article 14(4) of the Constitution of Kenya provides that:

“A child found in Kenya who is or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”

The child was about 1 ½ years old when he was abandoned. I therefore declare this child to be a citizen of Kenya.

THE APPLICATION

Section 4(a) of the Children Act obliges a court to give priority to the best interest of the child in applications of this nature. This child had been abandoned. His only future lay in an institution such as a Children's Home. Despite their best efforts for which we as society laud them, such institutions are not able to replicate a true home environment. The adoption offers the child the opportunity to be raised in a real home with loving parents, family and a sibling.

I have carefully perused the report filed by the *Guardian ad litem* as well as the Home Report filed by the Children's Officer. Both reports indicate that the child has settled in well with his new family. They are currently residing at [particulars withheld]. I was able to observe the child when the family appeared before me – the child was healthy, happy and obviously well cared for. He had clearly bonded with both applicants and views them as his parents. It was also clear that the elder child was very fond of his younger brother. They are already a family. I am satisfied that this adoption will serve the best interests of this child – and I readily authorize the same. I do allow prayers (1), (2), (3), (4), (5) and (6) of the Originating Summons dated 26th August, 2014.

Dated and Delivered in Mombasa this 10th day of November, 2014.

M. ODERO

JUDGE