

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC.CIVIL CASE NO. 291 OF 2021
IN THE MATTER OF THE LAW OF THE CHILD ACT. R.E 2019
AND
IN THE MATTER OF JY INFANT OF
P.O.BOX 80496, DAR ES SALAAM, TANZANIA
AND
IN THE MATTER OF AN APPLICATION FOR AN ADOPTION
ORDER BY SMS AND
MJB
OF P.O.BOX 80496 DAR ES SALAAM, TANZANIA

11/10/2021 & 3/11/2021

RULING

N.R. MWASEBA, J.

The petitioners, **SMS** and **MJB** (Names withheld to hide identity), have brought this application seeking for an order for adoption of an infant **JY** (Name withheld). The Petition is grounded on reasons that the proposed adoption will be in the best interest of the child.

It is pleaded that the petitioners are husband and wife who have been staying together ever since their marriage on 6th June 2006. Both of them are citizens of the United States of America born on 1st December, 1978 and 28th July, 1979 respectively. That they have been residing in Tanzania for more than four years since 2016 and copies of resident permit No. RPB1073313 for the period of 23rd March, 2016 to 6th March, 2018; resident permit No. RPB1002037B for the period of 30th May, 2019 to 23rd March, 2021 and current special pass pending receipt of his new permit have been annexed to their affidavit. The first petitioner is a caterer, engaged at FLM Catering Limited where he derives a monthly income of USD 1,700.00 and the second petitioner is a housewife.

The petitioners aver that, in early 2020 they made an application to the Commissioner for Social Welfare requesting to become approved foster parents and, pursuant to that application, they were duly approved and were allowed to take the infant one **JY** who is the subject of this petition.

The fact giving rise to this petition is that, the infant **JY** was abandoned at a private home in Mwanza when his mother absconded from employment. The employer took care of the child for a few days to see if its mother would return, but the mother did not return thus the child

was taken to the police station. While the police were investigating the matter, the child was admitted to Forever Angels Orphanage. Despite a lengthy search, the police were unable to find any of the infant's biological family members who are still unknown and all attempts by the authorities to locate his birth family failed.

Before this court, the petitioners were represented by Ms Brooke Montgomery learned counsel while Ms Asha Mbaruku appeared as a *guardian ad litem* with a role of preparing a social investigation report and representing the best interest of an infant. The said *guardian ad litem* was duly appointed by this court after having confirmation that she was appointed by the Commissioner for Social Welfare to be a *guardian ad litem* as per letter with Ref No. CKB.454/662/01/45.

After being appointed by the court, she was ordered to prepare a social investigation report and file it in the court as specified under **regulation 11 (1) (2) of the Adoption of a child Regulation**, GN 197 of 2011. She complied with the court order.

During hearing of the petition, Ms Brooke learned counsel prayed to adopt all the statements in their application and the affidavit sworn by the petitioners in support of their application to form part of her submission. She therefore prays that an order for adoption of the infant

be granted pursuant to the Law of the Child Act and its subsidiary registration. That, the order be made to change the name of the child to **SBS** (Name withheld) and the child's birth be recorded as 15/5/2020 and his place of birth be Mwanza- Tanzania. She also tendered in court the original consent from the commissioner with regard to adoption order.

Ms Asha Mbaruku, the *guardian ad litem* reiterated what she has had written in her report and recommended for adoption order as it is in the best interest of the infant **JY**.

After having submissions from both sides, I wish to refer to **Section 74 (1) of the Law of the Child Act**, Cap 13 R.E 2019 which illustrates the requirements for adoption by foreigners as follows:

(1) A person who is not a citizen of Tanzania may adopt a Tanzania child, if:

(a) the child may not be placed in a foster or adoptive family or be cared for in a manner suitable for the child's best interest while the child is in Tanzania;

(b) he has stayed in Tanzania for at least three consecutive years;

(c) he has fostered the child for at least three months under the supervision of a social welfare officer;

(d) he does not have a criminal record in his country of origin or any other country;

(e) he has a recommendation concerning his suitability to adopt a child from his country's social welfare officer and other competent authority of his permanent country of residence; and

(f) he has satisfied the court that his country of origin respects and recognizes the adoption order.

I have gone through the pleadings and submission by both sides and found that the above provision was complied with hence the application was not contested at all. In court, the petitioners stated that they had fostered the infant since 15/12/2020 and that the child is awesome, and they love him. They further expressed that they see the child to be a blessing to them. Upon my close observation in court, I noticed several instances which substantiate reliably that the petitioners love the infant, and he already has a bond with them.

The Commissioner for Social Welfare consented for the petitioners to adopt the infant **JY** and its written consent was tendered in court. It is further a recommendation of the *guardian ad litem* that the adoption of the infant by the petitioners is in the best interest of the child. Keeping in mind that the efforts of tracing the biological parents of the infant has proved futile such that the child was placed at the orphanage institution, giving him a family through adoption will be the best interest to the child.

From the above reasons the best interest of the child is the fundamental principle and central in determining these proceedings particularly when there are no biological parents. The Social Welfare Department involved in these judicial proceedings has identified and considered the best interest of the minor **JY** in their individual reports filed in court.

In my considered view, therefore, applying the law and the principles on the best interest and welfare of the child, the petitioners have been found suitable and fit as joint adoptive parents for baby **JY**. They have complied with **section 74 (1), (2) (3) and (4) of the Law of the Child Act**, Cap 13 R.E 2019 and its regulations. Accordingly, the petition is allowed, and the adoption order is granted as prayed.

It is so ordered.

DATED at DAR ES SALAAM this 3rd November, 2021



N.R. Mwaseba
N.R. MWASEBA

JUDGE

3/11/2021