

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 201 OF 2014

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY J W - MINOR

J O Y.....1ST APPLICANT

S M K.....2ND APPLICANT

J U D G M E N T

The applicants, J O Y and S M K, are Finish citizens. They were married on 7th February 2009. The 1st applicant is employed as a senior consultant at *[particulars withheld]*, Finland while the 2nd applicant is a researcher employed at the *[particulars withheld]*. The applicants have so far not been blessed with any children of their own due to medical reasons. They wish to adopt a child. In this regard, the applicants approached the relevant authorities in Finland with a view to securing the requisite approvals to enable them adopt a child, specifically a foreign child. The applicants were investigated by the Social Services Department, City of Helsinki, Finland. Under Finnish Adoption Laws, it is the said local authority that has jurisdiction to approve the application by applicants to adopt a child. The said authority granted its permission. The National Supervisory Authority for Welfare and Health which is in-charge of The Finnish Adoption Board, the Central Authority that administers The Hague Convention on Inter-country Adoption, also granted permission to the applicants to adopt a child from Kenya. The approval is dated 4th December 2012. The National Adoption Committee of Kenya duly approved the application by the Applicants to adopt a child in Kenya. A certificate dated 25th February 2014 was issued to that effect.

Baby J W, the child, the subject of these adoption proceedings was born on 18th September 2011 at Thika Level 5 District Hospital to one F W K. The child was abandoned by her mother on the same day when she absconded from the hospital. She was admitted at the hospital's nursery unit for temporary care and protection. A report of the abandonment was made on 23rd September 2011 to Thika Police Station. The child was discharged from the hospital and admitted at Open Hand Children's Home on 12th October 2011. The Children's Court, Thika committed the custody of the child to the said children's home on 19th October 2011 pending these adoption proceedings. The child was placed under the custody of the applicants on 14th May 2014 for compulsory foster care. Since then, the child has been under the continuous 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 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 Social Service Department of the City of Helsinki, the Director of Children Services and by E K, the guardian ad litem. 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, Finland. This court had the

benefit of reading the report prepared by The Social Service Department of the City of Helsinki. This court is satisfied that the applicants have been approved by the relevant authorities in Finland 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 has been issued by the said committee approving the applicants' application to adopt a child in 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 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 adoption. The applicants have had the custody of the child since 14th May 2014. In the period that the child has been in their custody, the child has bonded well 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. The court saw the child in court. The said child is thriving under the care of the applicants.

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 she 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 behaviours or other changes in the child; that the adoption society in Finland (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 Finland; that the applicants undertake to allow the representatives of the Foreign Adoption Society in Finland 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, J O Y and S M K are hereby authorized to adopt baby J W. The child shall henceforth be known as Joan W J K. Her date of birth shall be 18th September 2011. Her place of birth shall be Thika Level 5 District Hospital, Thika- Kenya. She is presumed to be a Kenyan citizen by birth. M A K and N E K, a cousin of the 2nd applicant and his wife, are hereby appointed to be the legal guardians 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 30TH DAY OF JANUARY, 2015

M. MUIGAI

JUDGE

