

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 218 OF 2014

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY M W - MINOR

K M M.....1ST APPLICANT

S I M.....2ND APPLICANT

J U D G M E N T

The applicants, K M M and S I M, are citizens of Norway. They were married on 19th December 2007. The 1st applicant is a teacher while the 2nd applicant is a nurse. The Applicants have so far not been blessed with any biological children of their own due to medical reasons. The applicants wish to adopt a child. In this regard, the applicants approached the relevant authorities in Norway with a view to securing the requisite approvals to enable them adopt a child, specifically a foreign child. The applicants were investigated by the City of Oslo, Agency for Child and Family Welfare Services on behalf of the Regional Office for Children, Youth and Family Affairs, Eastern Norway. They were found to be suitable parents to adopt a child. Under Norwegian Adoption Laws, it is the said local authority which has jurisdiction to approve the application by applicants to adopt a child. The said Regional Office for Children, Youth and Family Affairs, Eastern Norway issued a certificate approving the said application for adoption. The approval is dated 15th May 2014. This certificate was issued on behalf of the Central Authority on Inter-country Adoption. The applicants were further assessed by InorAdopt, Norway, a foreign Adoption Society duly approved by the National Adoption Committee of Kenya. They were duly approved as suitable to adopt a foreign child. The National Adoption Committee of Kenya duly approved the application by the applicants to adopt a child in Kenya. A certificate dated 18th March 2014 was issued to that effect.

Baby M W, the child, the subject of these adoption proceedings, was found abandoned in Kiangombe area, Thika District on 28th September 2011. He was admitted at Children Karibuni Organization for care and protection. A report on the abandonment was made on 23rd April 2013 to Makongeni Police Station. 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 20th June, 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. Kenya Children's Homes, an adoption society issued a certificate declaring the child free for adoption. The certificate is dated 18th December 2013.

The court read the reports prepared by Kenya Children's Homes Adoption Society, the local adoption society, the City of Oslo, Agency for Child and Family Welfare Services, the Director of Children's Services and by M K 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, Norway. 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 Norway 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 20th June 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. 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 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 behaviours or other changes in the child; that the adoption society in Norway (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 Norway; that the applicants undertake to allow the representatives of the Foreign Adoption Society in Norway 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, K M M and S I M are hereby authorized to adopt baby M W. The child shall henceforth be known as M W M. His date of birth shall be 1st November 2010. His place of birth shall be Kiangombe-Thika in Kenya. He is presumed to be a citizen of Kenya by birth. S G O and K M O, the sister and brother in-law respectively of the 2nd applicant 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

Judgment read in Open Court in the presence of Mr. Kamenju holding brief for Mr. Ogutu for the Applicants.

M. MUIGAI

JUDGE

