

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO 266 OF 2014

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF BABY C S

T F R.....1ST APPLICANT

J C L2ND APPLICANT

JUDGEMENT

Before this Court is an application by T F R, hereafter “the 1st Applicant”, and J C L, hereafter “the 2nd Applicant”, seeking to be allowed to adopt Baby C S, hereafter “the child”. Both Applicants are Swedish citizens and they were married on 30th December 2010. The 1st Applicant is currently employed by *[particulars withheld]* Consulting in Malmo, Sweden as an *[particulars withheld]* consultant cum *[particulars withheld]* manager while the 2nd Applicant is employed as the head teacher at *[particulars withheld]*. The Applicants’ marriage has thus far not been blessed with children of their own due to medical reasons. They wish to adopt a child. In this regard, the Applicants approached the relevant authorities in Sweden with a view to securing the requisite approvals to enable them adopt a child, specifically a foreign child.

The Applicants were investigated by the Malmo Stad Familjerattsbyran, Family Law Division which, under Swedish Adoption Laws, is the pertinent local authority with jurisdiction to approve the Applicants’ proposed application to adopt the child. Pursuant to its home study report dated 4th April 2013, the said authority found the Applicants suitable to adopt the child and subsequently gave the Applicants a certificate of consent to signify its approval of the adoption. By its letter dated 2nd September 2014, the Swedish Intercountry Adoptions Authority, the Central Authority that administers The Hague Convention on Inter-country Adoption in Sweden, granted permission to the Applicants to adopt a child from Kenya. The National Adoption Committee of Kenya by its letter dated 2nd May 2014 duly approved the application by the Applicants to adopt a child in Kenya.

The child who is the subject of the present adoption proceedings was born on 26th July 2013 at Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu to one B O. The child was abandoned by her biological mother one day after birth when the mother absconded from the hospital. The child was admitted at the hospital's nursery unit for temporary care and protection. A report on the matter of the abandoned child was made on 23rd September 2011 to Kondele Police Station, where it was recorded vide OB No 25/27/7/2013. The case of the abandoned child was then referred to the Children’s Department which secured placement for the child at New Life Home Trust in Kisumu, where the child was subsequently admitted on 20th August 2013 for care and protection.

The Children's Court at Winam, in accordance with **Section 119** of the **Children Act**, committed the custody of the child to New Life Home Trust, Kisumu on 21st August 2013 vide P & C No 241/2013. The child was placed in the custody of the Applicants on 14th August 2014 for foster care pending the completion of the present adoption proceedings. The child has since then been in the continuous custody and care of the Applicants. According to correspondence from relevant police authorities in Kisumu, efforts to trace the biological mother of the child have been unsuccessful. A report to that effect has been

filed in court. Thus, this Court dispenses with the consent of the child's biological parents to the proposed adoption by the Applicants. Little Angels Network, an adoption society, issued a certificate declaring the child free for adoption pursuant to **Section 156(1)** of the **Children Act**. The certificate, serial number 001423, is dated 26th February 2014.

The Applicants filed an application for adoption on 13th November 2014 seeking, among others, orders from this Court that H N K be appointed as the guardian ad litem, and that the Director of Children's Services be ordered to investigate the suitability of the Applicants to adopt the child and submit a report on the same. The Applicants also sought to have the Court appoint F G L and K A-C L, the 2nd Applicants brother-in-law and sister respectively as the child's legal guardians, and to order that upon adoption the child be known as S C R. On 7th January 2014, this Court issued an order appointing H N K as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children's Services to file their respective reports in Court.

The court read the reports prepared by Little Angels Network, the local adoption society, the Social Welfare Committee of Malmo, the Director of Children Services and by H N 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 this case, the Applicants have been assessed and approved by the relevant authorities in their country of origin, Sweden. This court had the benefit of reading the report prepared by the Social Welfare Committee of the City of Malmo. This court is satisfied that the Applicants have been approved by the relevant authorities in Sweden 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. In the present case, the Applicants have been approved by the said National Adoption Committee. While a formal approval certificate has not been issued by the said committee to this effect as this was subject to an audited financial report being submitted by Little Angels Network, the Court has satisfied itself that the Applicants have provided sufficient evidence of their financial capability to take care of the child. Moreover, this Court is guided by the best interests of the child which should be the primary consideration when making any decision affecting a child. In this case, given the particular health requirements of the child and the free provision of the same in Sweden, the child stands to benefit immensely from the proposed adoption.

The third requirement that the Applicants must satisfy the court is 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 is clear to the court that the Applicants have fulfilled all the legal requirements in respect of international adoption. The Applicants have had the custody of the child since 14th August 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 observed the Applicants and the child when they attended Court, and it has formed the opinion that the 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 Sweden to undertake post-adoption supervision for a period of three years from the time of the issuance of this adoption order. The Applicants have made 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 also, that they shall not give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

Moreover, the Applicants are aware and have agreed that the adoption society in Sweden (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 Sweden. They have also undertaken to allow the representatives of the Foreign Adoption Society in Sweden 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 final analysis, therefore, this court finds that the Applicants have met the criteria set for international adoptions and also that the adoption will be in the child's best interests. The Applicants, T F R and J C L are hereby authorized to adopt Baby C S. The child shall henceforth be known as S C R. His date of birth shall be 26th July 2013. His place of birth shall be Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu, Kenya. He is presumed to be a Kenyan citizen by birth. F G L and K A-C L, the brother-in-law and sister of the 2nd Applicant respectively, are hereby appointed as the legal guardians of the child should such eventuality arise. 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 13TH DAY OF MARCH 2015

M. MUIGAI

JUDGE