



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**FAMILY DIVISION**  
**ADOPTION CAUSE NO. 1 OF 2015**  
**IN THE MATTER OF AN APPLICATION FOR THE ADOPTION OF BABY E S**  
**JUDGMENT**

**INTRODUCTION**

1. By Originating Summons dated 16<sup>th</sup> January 2015, the applicant spouses of Netherlands seek principally orders that they be authorized jointly to adopt Baby E S upon being declared a Kenyan by birth; that the child be named E S S B henceforth; that named guardians be appointed pursuant to section 164 of the Children Act 2001; and that the Registrar General be directed to make the appropriate entries in the Adopted Children's Register, as provided for under section 170 of the Act.

**JURISDICTION TO MAKE AN INTERNATIONAL ADOPTION ORDER**

2. Pursuant to section 162 of the Children Act –

*“162. An adoption order may be made in respect of a child upon the joint application of two spouses who are not Kenya citizens and not resident in Kenya (in this Act referred to as an “international adoption”) if they—*

*(a) have obtained the consents specified in paragraph (e) of subsection 4 of section 158; and*

*(b) have satisfied the court that the country where they ordinarily reside and where they expect to reside with the child immediately after the making of the adoption order will respect and recognise the adoption order and will grant resident status to the child; and*

*(c) have been authorised 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 immediately after the making of the adoption order. ”*

3. Under section 163 of the Children Act, the court before making an order of adoption is required to satisfy itself of certain matters as follows:

*“163. (1) The court before making an adoption order shall be satisfied—*

*(a) that every person whose consent is necessary under this Part, and whose consent*

*is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;*

*(b) that the order if made will be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child, and to the ability of the applicant to maintain and educate the child;*

*(c) that the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;*

*(d) that any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;*

*(e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of the child has expressed willingness to do so; and*

*(f) that both the applicant and the child have been assessed and evaluated by a registered adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court.”*

4. Finally, the court on making an adoption order has further power to appoint a guardian for the child as provided for under section 164 of the Children Act as follows:

*“164. (1) The court at the time of making an adoption order may upon the application of the adopter, or of its own motion or in the case of applicants for an international adoption shall appoint any person approved by the adopter and whose prior consent thereto has been given in writing to be the guardian of the child in the event of the adopter, or both of the adopters where two spouses have applied for the adoption order, dying or becoming incapacitated before the child is of full age.*

*(2) The court may, at any time before the child is of full age, on the application of the adopter, or of the guardian appointed under subsection (1) or of the child, revoke such appointment and appoint any other person to be the guardian of the child.”*

### **THE CHILD**

5. The Child named E S, an African female child in good health born on 3<sup>rd</sup> January 2013 at Maseno Mission Hospital in Emuhaya District of Western province alleged of a mother and father who were related, was abandoned by the mother on advice that the customs of eh community did not allow a child of such relationship to be brought up with in the Community. Accordingly, with the consent of mother, initially, (and later of the father), the child was, with a view to adoption, placed with New Life Home Trust and subsequently formally placed with the Home by order of the Children Court, Maseno in case no. 9 of 2013 on 30<sup>th</sup> April 2013. The Child was declared free for adoption by the Little Angels Network Adoption Society Case Committee on 28<sup>th</sup> May 2014 and placed with the applicants on the 15<sup>th</sup> August 2014.

### **THE PROSPECTIVE PARENTS**

6. The applicants are spouses, citizens of the Netherlands of Christian faith, both certified to be medically fit with no criminal record and aged 33 and 31, respectively. They are both employed

and have reasonable income and assets in house, car, and bank assets, among other assets. They have one other child M H T B adopted from Kenya on 10<sup>th</sup> August 2011 through the High Court at Nairobi and they have continuously lived with the child the subject of these adoption proceedings since 15<sup>th</sup> August 2014.

7. The applicants have executed the **Undertaking by Adopters – Foreign Adoption** under the 11<sup>th</sup> Schedule of Children Act and the organization **Stitching Afrika, Hoeflingweg 14, 7241 CH LOCHEM, THE NETHERLANDS**, has give an **Undertaking by Foreign Adoption Society** under 12<sup>th</sup> Schedule to make follow up supervisions with reports to local adoption society for a period of three years from the date of arrival in the receiving country. They have also appointed legal guardians who have agreed to act as guardians for the child in the event that the adoptive parents died or otherwise became incapable of take care of the Child.

#### **CONSENTS AND APPROVALS**

8. The consent of the mother who offered the child for adoption is dated 13<sup>th</sup> September 2013 but the father could not, initially, be traced and his consent to the adoption of the child is shown at p.42 of the Application as having been obtained on 5<sup>th</sup> May 2014. The prayer for waiver of consents under section 159, therefore, appears redundant. The applicants have demonstrated approvals by the Government of The Netherlands with the the Ministry of Safety and Justice, on advice by the Zwolle Child Welfare Council, granting permission on 19<sup>th</sup> July 2012 and the Kenya Adoption Committee on 11<sup>th</sup> February 2014 for their adoption of the child.

#### **POST-ADOPTION STATUS OF THE CHILD.**

9. The applicants have demonstrated that the child will upon an Adoption Order be granted citizenship and, therefore, become entitled to enter and reside, in The Netherlands where the applicants reside, in accordance with the laws of that Country.

#### **STATUTORY REPORTS**

10. The guardian *ad litem* Ms. J O, the Little Angels Network adoption society and Mr. Zephaniah Apoko, the sub-County Children’s Officer, Msambweni on behalf of the Director of Children Services, filed respective reports respectively dated 21<sup>st</sup> April, 2015, 27<sup>th</sup> April 2015 and 24<sup>th</sup> April 2015 on the proposed adoption all which were positive in recommending the adoption to be in the best interest of the child.

#### **OBSERVATIONS AND FINDINGS OF THE COURT**

11. The Court heard the testimony of the applicants, the guardian ad litem, the representative from the Little Angels Network adoption society and the Children Officer, Msambweni sub-County as well as observed the child in court and its relation with the applicants. From its own observation, the Court agreed with the reports of the guardian, the Adoption Society and the Children Officer that the child had bonded well with the prospective parents and that the adoption should be granted.

#### **BEST INTERESTS OF THE CHILD**

12. The child has lived with the prospective adoptive parents since 15<sup>th</sup> August 2014 and according to relevant reports has bonded into the applicants’ family, which includes another adopted child from Kenya. Having found that the applicants are suitable and able to provide for the needs of child, among others, loving care, a home, maintenance and education, the child has an opportunity to be raised in a home setting, and the best interest of the child must lie in the continued life as a member of the applicants’ family.
13. Accordingly, I find that it is in the **best interests of the child**, whose biological parents have not been found up to the time of this order, to allow the adoption so that he is permanently provided

with the suitable setting of a home and loving care of the applicants with whom she has clearly well bonded as a child to his parents.

**ORDERS**

14. Accordingly, the final orders in Originating Summons dated 16<sup>th</sup> January 2015 are granted as prayed, save for prayer 2 thereof on waiver of consents which is struck out as redundant.
15. The Orders of the Court will issue in the full names of the Applicants, the Child and the Guardians under section 164 of the Children Act, 2001.

**DATED SIGNED AND DELIVERED THIS 12<sup>TH</sup> DAY OF JUNE 2015.**

**EDWARD M. MURIITHI**

**JUDGE**

In the presence of: -

Mr. Njoroge for the Applicants

Mr. Buoro - Court Assistant.