



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ADOPTION CAUSE NO. 141 OF 2015
IN THE MATTER OF THE CHILDREN ACT, 2001
AND
IN THE MATTER OF BABY M B (MINOR)

R B1ST APPLICANT

M E B2ND APPLICANT

J U D G M E N T

The Applicants R B and M E B, are citizens of Norway. They were married on 7th September 2002. The 1st Applicant is employed as a foreman assistant at AT while the 2nd applicant is a financial assistant at Vest. Both Applicants are resident in Norway. The Applicants have not been blessed with any children due to medical reasons. They wish to adopt a child. 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. They were investigated by the Ask?y Child Welfare Service on behalf of the Regional Office for Children, Youth and Family Affairs, Western Norway who found them 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 the Applicants to adopt a child. The said Regional Office for Children, Youth and Family Affairs, Western Norway issued a certificate approving the said application for adoption. The approval is dated 16th December 2013. This certificate is issued on behalf of the Central Authority on Inter-country Adoption. The Applicants were further assessed by In or Adopt, Norway, a foreign adoption society approved by the National Adoption Committee of Kenya. The National Adoption Committee of Kenya duly approved the application by the applicant to adopt a child in Kenya. A certificate to that effect was issued on 20th January 2015 by the said committee.

Baby MB, the child, the subject of these adoption proceedings was found abandoned on 28th October 2013 near [particulars withheld] Mortuary. The child was presumed to have been born on the same day. A report was made to Bungoma Police Station and the same was recorded vide OB No. [particulars withheld]. The child was taken to Bungoma District Hospital for medical attention. He was later discharged from the hospital and was admitted to Rehema Pefa Children's Home on 11th December 2013 for care and protection. The Principal Magistrate Children's Court sitting at Bungoma, in accordance with **Section 119** of the **Children Act**, committed the child to the said children's home on 11th December 2013 vide **P&C No. 86 of 2013**. The child was placed in the custody of the Applicants on 3rd March 2015 for mandatory bonding prior to the adoption. The child has since then been in the continuous custody and

care of the Applicants. According to correspondence from relevant authorities in Bungoma, no one has come forward to claim the child. A letter to that effect dated 18th June 2014 has been filed in court. Thus, this court dispenses with the consent of the child's biological parents to the proposed adoption of the child 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 said freeing certificate is no. [particulars withheld] dated 29th October 2014.

The Applicants filed an application for adoption on 4th June 2015 seeking, among others, orders from this Court that C W K be appointed as the child's guardian ad litem, and that the Director of Children Services and the child's guardian ad litem be ordered to investigate the suitability of the Applicants to adopt the child and submit their respective reports on the same. The Applicants also sought to have the Court appoint T H and T H, close friends of the Applicants as the child's legal guardians, and to order that upon adoption the child be known as A M B. On 26th June 2015, this Court issued an order appointing C W K as the child's guardian ad litem, and further directing the guardian ad litem and the Director of Children Services to file their respective reports in Court. However, following an application by the Applicants by way of chamber summons filed in court on 28th July 2015, this court dispensed with the report of the Director of Children Services on 2nd October 2015.

Reports were made by the Ask?y Child Welfare Service, Little Angels Network and the guardian ad litem prior the adoption hearing. The court evaluated the same and they recommended the adoption. This being an international adoption, there are conditions that have to be satisfied before granting the same according to **section 162 of the Children's Act**. The first condition is consent of the parents or relatives that has to be sought. The court evaluated all the reports made by Little Angels Network and the guardian ad litem respectively and they all confirmed that the child was abandoned near [particulars withheld] Mortuary on 28th October 2013. The matter was reported to Bungoma Police Station vide OB No. [particulars withheld]. The police tried to trace the relatives of the child for six months but all in vain as per the letter dated 18th June 2014. For this matter, the consent of the parents or relatives is dispensed with pursuant to **section 159(1)(a)(i) of the Children's Act**.

As regards the second condition, the applicants were assessed by the adoption agency, Ask?y Child Welfare Service , who approved them to be favorable parents and can proceed to adopt a foreign child. The Regional Office for Children, Youth and Family Affairs, Western Norway in its letter dated 16th December 2013, granted the applicants permission to proceed with adopting a foreign child. The Norwegian Directorate for Children, Youth and Family Affairs gave an assurance that the Norwegian government will recognize the adoption order granted in Kenya. Hence the Applicants satisfied this condition.

The third condition was fully satisfied according to the reports made by the foreign adoption agency, Ask?y Child Welfare Service, the guardian ad litem, and the local adoption society. The foreign adoption agency Ask?y Child Welfare Service carried out a home study on the applicants and approved them to be emotionally and financially stable to adopt a foreign child. Locally, the adoption society, Little Angels Network affirmed that the Applicants were suitable parents for adoption and so was the National Adoption Committee sitting on 18th November 2014. The guardian ad litem observed during her home visits to the Applicants' house that the child had bonded well with the Applicants. The Applicants have given the child good care. The guardian ad litem therefore approved them to be suitable to adopt the child. The Applicants have no criminal record as per the certificates dated 10th January 2014.

The court is of the opinion that it's in the child's best interest to be adopted by the Applicants since they have met the criteria of international adoptions. The court makes the orders that the applicants shall assume the responsibilities of parents to the child as one born in marriage. The child shall be entitled to inherit from the property of the applicants and shall not be given up because of any eventualities that might result; like bad behavior. The Applicants shall grant the adoption society access in their country to perform the post-adoption supervision for a period of three (3) years and at any reasonable time. In or Adopt, Norway has guaranteed this court that it shall carry out the post-adoption supervision and shall

avail the annual reports for a period of three (3) years.

The court hereby grants adoption of the child to the applicants R B and M E B. The child shall be known as A M B. His date of birth shall be 28th October 2013 and the place of birth shall remain Kanduyi, Bungoma-Kenya. He is presumed to be a citizen of Kenya by birth. The legal guardians of the child shall be T H and T H, (who are close friends of the Applicants) should any misfortune occur. The guardian ad litem is hereby discharged. The Registrar General should thereby enter the order of adoption. It is so ordered.

READ AND SIGNED IN OPEN COURT ON THIS 13TH DAY OF NOVEMBER, 2015

M. W MUIGAI

JUDGE

In the presence of;

Mr. Ogutu for the Applicant