



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ADOPTION CAUSE NO. 90 OF 2015**

**IN THE MATTER OF THE CHILDREN ACT, 2001**

**AND**

**IN THE MATTER OF BABY D alias ABANDONED BABY BOY (MINOR)**

**BV .....1<sup>ST</sup> APPLICANT**

**MV .....2<sup>ND</sup> APPLICANT**

**J U D G M E N T**

Before this court is an application filed by the applicants BV and MV seeking adoption of Baby D alias Abandoned Baby Boy. The applicants are Danish citizens. They got married on 15<sup>th</sup> August 2009. The first applicant is the Head of Business Development with [Particulars Withheld] in Denmark and the second applicant is an English and Music teacher at [Particulars Withheld] Gymnasium also in Denmark. The applicants have not been blessed with children in their marriage for medical reasons. The applicants resorted to raising a family through adoption. The applicants expressed their wishes of adopting a child specifically from Kenya to an adoption agency, AC International Child Support-Denmark, which is approved by the Kenya's Adoption Committee to conduct international adoptions. In order to qualify to adopt a child from Kenya (in an inter-country adoption) in accordance with the Danish adoption laws, the applicants were assessed by the State Administration for Greater Copenhagen Adoption Office. A report dated 10<sup>th</sup> October 2013 was duly prepared. The report is favourable and recommends the proposed adoption. The National Social Appeals Board, Division of the Family Affairs of the Danish Ministry of Social Affairs, Children and Integration confirmed by its letter dated 7<sup>th</sup> November 2013 that any decision rendered by this court in relation to the adoption of the child will be recognized by the Danish government and which will issue Danish citizenship to the child. Their application was sent via Kenya Children's Home, a local adoption society and the same was approved by National Adoption Committee of Kenya in a meeting held on 22<sup>nd</sup> July 2014 as per the certificate attached.

The child, JB was found abandoned at a jua kali plot in Embakasi on 15<sup>th</sup> December 2013. He was presumed to have been born on 20<sup>th</sup> June 2012. The matter was reported to Embakasi Police Station on the same day vide OB No. 72/15/12/2013 and was placed under care and protection Thomas Barnardo House on 16<sup>th</sup> December 2013. The child was committed to the same home by the Senior Resident Magistrates Children's Court at Nairobi on 12<sup>th</sup> March 2014 vide Protection and Care Case No. 17 of 2014. The police traced the relatives of the child but all in vain. The child was declared free for adoption by Kenya Children's Home, an adoption society and a certificate no. 1158 was issued on the 15<sup>th</sup> October 2014. The child was placed under the mandatory custody to the applicants vide foster care agreement form dated 2<sup>nd</sup> January 2015. The court appointed POO as the guardian ad litem from the order dated 8<sup>th</sup> May 2015.

Reports were made by the State Administration for Greater Copenhagen Adoption Office, Denmark, Kenya Children's Home, the local adoption agency and by 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 Kenya Children's Home and the guardian ad litem respectively and they all confirmed that the child was abandoned at a Jua Kali Plot in Embakasi. The matter was reported to Embakasi Police Station vide OB No72/15/12/2013. The police traced the relatives of the child for six months but all in vain as per the letter dated 10<sup>th</sup> September 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 State Administration for Greater Copenhagen Adoption Office, Denmark who approved them to be favorable parents and can proceed to adopt a foreign child in its report dated 10<sup>th</sup> October 2013. The National Social Appeals Board, Division of the Family Affairs of the Danish Ministry of Social Affairs, Children and Integration confirmed by its letter dated 7<sup>th</sup> November 2013 that any decision rendered by this court in relation to the adoption of the child will be recognized by the Danish government and which will issue Danish citizenship to the child. Hence the applicants satisfied this condition. Locally, the adoption society Kenya Children's Home and the guardian ad litem affirmed that the applicants were suitable parents for adoption and so was the National Adoption Committee sitting on 27<sup>th</sup> July 2014.

The third condition that the applicants must satisfy is that they have had custody of the child for a sufficient period of time to enable bonding to take place. The period should not be less than three (3) months. The applicants have had the continuous custody and care of the child since 2<sup>nd</sup> January 2015. 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 and taught him how to communicate in Danish. 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 22<sup>nd</sup> October 2013.

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 post-adoption supervision for a period of three (3) years and at any reasonable time. AC International Child Support 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 BV and MV. The child shall be known as DNV. His date of birth shall be 20<sup>th</sup> June 2012 and the place of birth shall be Nairobi-Kenya. He is presumed to be a citizen of Kenya by birth. The legal guardians of the child shall be UH and KH (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 13<sup>TH</sup> DAY OF NOVEMBER, 2015**

**M.W MUIGAI**

**JUDGE**