

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 145 OF 2015

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY A M - MINOR

H M K.....1ST APPLICANT

A U K2ND APPLICANT

J U D G M E N T

H M K, hereafter “the 1st Applicant”, and A U K hereafter “the 2nd Applicant, seek by their application filed on 8th June 2015 to be allowed by this court to adopt Baby A M, hereafter “the child”. The Applicants are husband and wife who celebrated their marriage on 1st July 2006. The 1st Applicant is currently employed as a County Administrator in Stockholm City Municipality. The 2nd Applicant is employed as a statistician analyst by the Swedish Research Council. Their marriage has not been blessed with any children due to medical reasons. The Applicants have previously adopted a child through an adoption order issued by this court on 24th April 2012. They wish to adopt another child.

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 Municipality of Solna- Sundbyberg Joint Family Legal Affairs Department who found them suitable parents to adopt a child. The said approval has been confirmed by the Solna-Sundbyberg Joint Family Legal Affairs Committee through its consent given on 30th May 2013. Under the Swedish Adoption Laws, it is the said local authority which has jurisdiction to approve the Applicants’ application to adopt a child. The Applicants were assessed by the Children Above All- Adoptions, Sweden, a foreign adoption society approved by the National Adoption Committee of Kenya. The National Adoption Committee of Kenya sitting on 18th November 2014 duly approved the application by the Applicants to adopt a child in Kenya.

Baby Ave Maria, the child, the subject of these adoption proceedings was presumed to have been born 29th May, 2012. Baby A M was found abandoned along Nyota Road in Ongata Rongai within Kajiado County on 30th May 2012. A report on the abandoned child was made to Ongata Rongai Police Station and the same was recorded vide OB No. 80/29/5/2012. The child was thereafter taken to Fatima Maternity for medical care on 30th May 2012. The District Children Officer, Kajiado North, was informed of the incident and managed to secure temporary placement for the child at Mahali Pa Maisha Children’s home where the child was admitted on 8th April 2014 for care and protection. The Principal Magistrate’s Court sitting at Mavoko, in accordance with **Section 119** of the **Children Act**, committed the child to Mahali Pa Maisha Children’s Home on 15th October 2014 vide P&C No. 10/2014. The child was placed under the custody of the Applicants on 7th March, 2015 for mandatory bonding prior to adoption. Since then, the child has been under the continuous care and custody of the Applicants. According to correspondences from Ongata Rongai Police Station, no one has come forward to claim the child. A letter to that effect dated 11th April 2014 has been filed in court. Thus, this court dispenses with the consent of the biological parents to the proposed adoption of the child by the Applicants. KKPI 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. 423 and the same is dated 27th August 2014.

The Applicants in their application for adoption filed on 8th June 2015 sought among others, orders from this Court that L 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 M M and K M, close friends of the Applicants as the child's legal guardians, and to order that upon adoption the child be known as A A A K. On 26th June 2015, this Court issued an order appointing L 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 10th July 2015, this court dispensed with the report of the Director of Children Services on 16th October 2015.

Reports were made by the Municipality of Solna- Sundbyberg Joint Family Legal Affairs Department, the Kenya Children's Homes, the local adoption society and the guardian ad litem prior the adoption hearing. The court evaluated the same and they recommended the Applicants' application for 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 the adoption society Kenya Children's Homes and the guardian ad litem respectively and they all confirmed that the child was found abandoned along Nyota road in Ongata Rongai within Kajiado County on 30th May 2012. The matter was reported to Ongata Rongai Police Station vide OB No. 80/29/5/2012. The police tried to trace the relatives of the child for six months but all in vain as per the letter dated 11th April 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 Municipality of Solna- Sundbyberg Joint Family Legal Affairs Department who found them suitable parents to adopt a child. The said approval has been confirmed by the Solna-Sundbyberg Joint Family Legal Affairs Committee through its consent given on 30th May 2013. Under the Swedish Adoption Laws, it is the said local authority which has jurisdiction to approve the Applicants' application to adopt a child. The Swedish Intercountry Adoptions Authority in its letter dated 27th November 2008 gave an assurance that the Swedish government will recognize the adoption order granted in Kenya. Hence the Applicants satisfied this condition. Locally, the adoption society, Kenya Children's Homes affirmed that the Applicants were suitable parents for adoption and so was the National Adoption Committee sitting on 18th November 2014.

The third condition was fully satisfied according to the reports made by the guardian ad litem, L K. 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 the Applicants to be suitable to adopt the child. The Applicants have no criminal record as per the certificates dated 26th June 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 the post-adoption supervision for a period of three (3) years and at any reasonable time. Children Above All- Adoptions, Sweden 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 H M and A UK. The child shall be known as A A A K. Her date of birth shall be 29th May 2012 and the place of birth shall remain Ongata Rongai, Kajiado-Kenya. She is presumed to be a citizen of Kenya by birth. The legal guardians of the child shall

be M M and K M, (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 11TH DAY OF DECEMBER , 2015

M. W MUIGAI

JUDGE