



**REPUBLIC OF KENYA**

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

**ADOPTION CAUSE NO. 157 OF 2015**

**IN THE MATTER OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF BABY B E**

**E L.....1<sup>ST</sup> APPLICANT**

**M H.....2<sup>ND</sup> APPLICANT**

**RULING**

The Applicants, E L (“the 1<sup>st</sup> Applicant”) and M H (“the 2<sup>nd</sup> Applicant”) are citizens of Germany. They are husband and wife having celebrated their marriage on 28<sup>th</sup> June 2011 in Nairobi, Kenya. The 1<sup>st</sup> Applicant is a lawyer by profession and is currently working as a program director with the [particulars withheld] Corporation (GIZ). The 2<sup>nd</sup> Applicant is a journalist currently working as a self-employed communication consultant. The Applicants have so far not been blessed with any children of their own due to medical reasons. They wish to adopt a child. The Applicants filed an application in this court on 18<sup>th</sup> June 2015 seeking to be allowed by this Court to adopt Baby B E, hereafter “the child”. The Applicants have been residents in Kenya continuously since 2011. They have therefore made this application as foreign residents in Kenya proceeding under local provisions of the **Children Act, 2001**. The Applicants’ application has been made under the Rule that allows foreigners who have been living in Kenya for a period of more than three (3) years to adopt a child under local provisions.

The child in this matter is presumed to have been born on 1<sup>st</sup> March 2013. The child was found abandoned on 31<sup>st</sup> March 2014 at [particulars withheld] within Nairobi. The incident of the abandoned child was reported to Riruta Police Station on the same day as per O.B. No. [particulars withheld]. Upon the request of the Sub County Children’s Office at Westlands, the child was referred to House of Charity Children Home for care and protection, where she was admitted also on 31<sup>st</sup> March 2014. The child was committed to the custody of House of Charity Children Home by the Senior Resident Magistrate Children’s Court at Nairobi vide P & C no. [particulars withheld] on 21<sup>st</sup> January 2015. The Applicants were given custody of the child for mandatory foster care pending adoption on 16<sup>th</sup> March 2015. Since then, the child has been in the continuous custody and care of the Applicants.

The Applicants filed an application for adoption on 18<sup>th</sup> June 2015 seeking, among others, orders from this Court that L J K be appointed as the child’s guardian ad litem, and that the Director of Children’s 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 J H and M H the 2<sup>nd</sup> Applicant’s brother and sister -in-law respectively, as the child’s legal guardians, and to order that upon adoption the child be known as B Z L. On 31<sup>st</sup> July 2015, this Court issued an order appointing L J 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.

Prior to the hearing of the adoption, the Adoption Society, Little Angels Network, prepared a report which is filed in court. They also issued a certificate declaring the child free for adoption; the certificate is dated 27<sup>th</sup> February 2015 and its serial number is [particulars withheld]. The guardian ad litem, L J K,

prepared a report which has been filed in court. All the statutory reports are favourable and recommend that this Court allows the Applicants to adopt the child.

This Court has carefully evaluated the facts of this adoption. This is an adoption by foreign residents in Kenya. It is evident that the Applicants have fulfilled all the legal requirements pertaining to the adoption of the child. The consent of the biological parents of the child has been dispensed with since the child was abandoned. The parents cannot be traced to give their consent. The child remained unclaimed for more than six (6) months since being committed to House of Charity Children Home and still remains unclaimed to date. Efforts by both Little Angels Network and Riruta Police Station to trace the child's biological parents have not been successful. This Court therefore makes a finding that the child in this matter is free for adoption and in need of alternative family care.

This Court has satisfied itself that the Applicants are qualified and able to take care of the child. The home visits by the guardian ad litem, the Adoption Society and the Director of the Children Services established that the Applicants are financially and emotionally capable of providing for the upkeep and education of the child. This court observed the Applicants with the child when they attended Court. It was evident that in the period that the Applicants have had the custody of the child, the child has bonded well with them. The child considers the Applicants as her parents. The applicants who have been residents in Kenya continuously since 2011 say that they plan to stay in Kenya so long as their jobs allow.

The Applicants, E L and M H being citizens of Germany, this has implications for the adoption process. In particular, the question arises as to whether the child will obtain German citizenship if the Applicants move from Kenya back to their country of origin. The Applicants obtained a letter dated 10<sup>th</sup> June 2015 from the Federal Central Office for International Adoption in Germany to clarify this matter. This letter makes clear that should an adoption be completed in Kenya by German nationals, the adoption would automatically be recognized in Germany and it also states that the child would automatically acquire German citizenship.

This Court has formed the opinion that it would be in the best interest of the child to be adopted by the Applicants. Accordingly, this Court allows the Applicants' application for adoption. The Applicants, E Land Ml H, are hereby allowed to adopt Baby B E. Henceforth, the child shall be known as B Z L. Her date of birth shall be 1<sup>st</sup> March 2013. Her place of birth shall be Nairobi, Kenya. She is presumed to be a citizen of Kenya by birth. J H and M H, the 2<sup>nd</sup> Applicant's brother and sister-in-law respectively, shall be the legal guardians of the child should such eventuality arise. I direct the Registrar General to enter this order in the adoption register. I hereby discharge the guardian ad litem. It is so ordered.

**READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 11<sup>TH</sup> DAY DECEMBER, 2015**

**M. MUIGAI**

**JUDGE**

*In the presence of ;*

*Ms. Kiguatha for the Applicant*