

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ADOPTION CAUSE NO. 245 OF 2013

IN THE MATTER OF THE CHILDREN ACT, 2001

AND

IN THE MATTER OF BABY E F *alias* UNKNOWN AFRICAN CHILD- MINOR

P M A L1ST APPLICANT

E D E A L.....2ND APPLICANT

JUDGMENT

The applicants, P M A L and E D E A L, are Swedish citizens. They were married on 1st September 2007. The 1st applicant is a social worker and a licensed psychotherapist employed by *[particulars withheld]* while the 2nd applicant is a chartered social worker employed by *[particulars withheld]*, a human rights organization. The applicants have so far not been blessed with any children due to medical reasons. The applicants wish to adopt a 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 Social Welfare Committee of Östermalm District, Stockholm who found them to be suitable parents to adopt a child. Under Swedish Adoption Laws, it is the said local authority that has jurisdiction to approve the Applicants to adopt a child. The said approval has been confirmed by the Swedish Inter-country Adoption Authority. The applicants were further assessed by Adoptions Centrum, Sweden, 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. An approval certificate to that effect was issued on 23rd May 2013.

Baby E F *alias* Unknown African Child, the child, the subject of these adoption proceedings was found abandoned at Kisii on 12th June 2011. He was rescued by a good Samaritan. It was presumed that the child had been trafficked from unidentified location. A report was made on the same day to Kisii Police Station. After recording the incident, the child was, on the same day, referred to Kisii Level V Hospital for care and treatment. The child was later placed with New Life Home Trust- Kisumu for care and protection. The Children’s Court at Kisii did on 30th September 2011 commit the custody of the child to the said children’s home. The child was placed under the custody of the applicants for compulsory foster care on 22nd July 2013. Since then, the child has been in the care and custody of the applicants. According to the police, their effort to trace the biological parents of the child has been in vain. A report to that effect has been filed in court. No one has come forward to claim the child. This court therefore dispenses with the consent of the biological parents of the child to the proposed adoption by the applicants. Little Angels Network, an Adoption Society issued a certificate declaring the child free for adoption. The certificate is dated 24th April 2013.

The court read the reports prepared by Little Angels Network, the local adoption society, the Social Welfare Committee of Östermalm District, Stockholm, Sweden, the Director of Children’s Services and by H N M, the guardian ad litem. All the above reports are favourable and recommend the applicants’ application to adopt the child. This is an international adoption. There are certain conditions that the applicants must fulfill before this court can allow them to adopt the child. The first condition is that the applicants must be approved by the relevant adoption authorities in their country of origin. In the present case, the applicants have been assessed and approved by the relevant authorities in their country of origin,

Sweden. This court had the benefit of reading the report prepared by the foreign adoption society. This court is satisfied that the applicants have been approved by the relevant authorities in Sweden to adopt a foreign child, and specifically a Kenyan child. The second condition is that the applicants must be approved by the National Adoption Committee in Kenya to adopt a child in Kenya. The applicants have been assessed by the said National Adoption Committee. A certificate has been issued by the said committee approving the applicants' application to adopt a child from Kenya. The third condition is that the applicants must satisfy the court that they have fulfilled the legal requirements regarding the adoption, including having custody of the child for a sufficient period to enable bonding to take place. This period must not be less than three (3) months. It was clear to the court that the applicants have fulfilled all the legal requirements in respect to international adoption. The applicants have had the custody of the child since 22nd July 2013. In the period that the child has been in their custody, the child has bonded with them. This was evident from the reports prepared by the Director of Children's Services, the guardian ad litem and the local adoption society. The applicants have established that they have the financial and emotional capability to take care of the child.

Having evaluated all the reports on record, and the applicants' application seeking to be granted permission to adopt the child, it was clear to this court that it would be in the best interest of the child for the application for adoption to be allowed. The applicants have given an undertaking that they shall allow access to the approved adoption society in their country of origin to undertake post-adoption supervision for a period of three years from the time of the issuance of this adoption order. The applicants have executed an undertaking that if this court grants the adoption order, they will permanently assume all the parental rights and duties of the biological parents in respect of the adopted child; they shall treat the adopted child as if he was born to them in their marriage; they have been made aware that once the adoption order is issued, it shall be final and binding during the lifetime of the child that they shall adopt; that the child shall have the right to inherit their property; that an adoption order cannot be recanted, and further, that they shall not give up the child owing to any subsequent unforeseen behaviours or other changes in the child; that the adoption society in Sweden (foreign adoption society) shall provide annual follow up reports on the progress of the child to the adoption society in Kenya (local adoption society) for a period of three (3) years from the date of the arrival of the child in Sweden; that the applicants undertake to allow the representatives of the foreign adoption society in Sweden free access to the child at any reasonable time. The applicants further give an undertaking that they shall accord their citizenship to the child.

In the premises therefore, this court finds that the applicants have met the criteria set for international adoptions. The applicants, P M A L and E D E A L are hereby authorized to adopt baby E F *alias* Unknown African Child. The child shall henceforth be known as E R E A L. His date of birth shall be 8th June 2011. His place of birth shall be Kisii-Kenya. H W and H W, friends of the applicants are hereby appointed to be the legal guardians of the child should misfortune befall the applicants. The Registrar General is hereby directed to enter this order in the Adoption Register. The guardian ad litem is hereby discharged. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2014

L. KIMARU

JUDGE