



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ADOPTION CAUSE NO. 9 OF 2014**  
**IN THE MATTER OF THE CHILDREN ACT 2001**  
**AND**  
**IN THE MATTER OF ADOPTION OF BABY F M**  
**AND**  
**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY F M BY H  
J M AND C S**  
**JUDGMENT**

The joint applicants namely **MR. H J M** (hereinafter referred to as the 1<sup>st</sup> Applicant) and **MRS. C S** (hereinafter referred to as the 2<sup>nd</sup> applicant) have filed in court this originating summons dated 17<sup>th</sup> April, 2014 seeking *inter alia* the following orders

**“3. THAT the consent of the biological parents of baby F M is and is hereby dispensed with since the child was found abandoned at Homa Bay District hospital nursery after birth by his mother on 22<sup>nd</sup> June, 2012 and the efforts by the authorities to trace the mother have not borne any fruits.**

**4. THAT the applicants MR. H J M and MRS. C S be allowed to adopt the child and be called henceforth F M M M.**

**5. THAT the Registrar-General be and is hereby ordered to make the appropriate entries in the Adopted Children’s Register in respect of baby F M.”**

The application was disposed of by way of *vive voce* evidence. On 11<sup>th</sup> June, 2014 the court did approve the appointment of **MS. S K S** as ‘*Guardian ad Litem*’ in the matter.

Section 156 of the Children Act 2001 provides that

**“No arrangements shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.”**

The subject child whose given names are ‘*F M*’ was born at the Homa Bay District Hospital on 22<sup>nd</sup> June, 2012. He was therefore aged about 1½ years in April, 2014 when this adoption application was filed in

court. He was well above the six week age limit set down by the Children Act. I have seen the certificate serial number xxxx dated 24<sup>th</sup> April, 2013 declaring the child Free for Adoption. This certificate was issued by the Little Angels Network which is a registered adoption society in Kenya.

The two applicants are both citizens of the Netherlands and are Dutch nationals seeking to adopt a Kenyan child. This then qualifies as a '*Foreign Adoption*'. In addition to section 156 section 162 of the Children Act 2001 is also applicable. In this regard I have seen annexed to the originating summons an approval certificate dated 29<sup>th</sup> April, 2014 and issued by the National Adoption Committee authorizing this foreign adoption application. Section 162 (c) of the Children Act requires that a foreign applicant(s) be authorized and recommended as persons suitable to adopt by a competent Government authority in their country of residence (this being The Netherlands). Also annexed to the originating summons is a decree dated 19<sup>th</sup> July, 2012 issued by the State Secretary of Security and Justice in the Netherlands granting the two applicants permission to adopt a child of foreign nationality. I am therefore satisfied that all the legal prerequisites for this foreign adoption have been met. Finally this application will be determined in line with '**The Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption**'.

### **THE APPLICANTS**

As stated earlier the applicants are both Dutch citizens. They are a married couple who solemnized their union on 30<sup>th</sup> August, 2007 in Meppel as evidenced by the certificate of marriage serial number TxxxxB under seal on 15<sup>th</sup> April, 2014. They both appeared before me in person. The couple have borne no biological child together in their marriage and are now desirous to adopt a child in order to complete their family. I have carefully perused the background Social Report prepared by the Child Welfare Council of the Netherlands. The report indicates that both applicants were raised in stable homes with both parents present. They each maintain close ties with their extended family. They both have attended pre-adoption counseling conducted by '*Stitching Afrika*' and affirm that their decision to adopt is based on the love they each have for children. The applicants are both gainfully employed and earn a good living. The 1<sup>st</sup> applicant is a school-teacher which profession I have no doubt will come in handy and his role as a parent whilst the 2<sup>nd</sup> applicant runs her own business. They confirm that they have discussed their decision to adopt with their families who have welcomed and encouraged their decision. The applicants commitment to the adoption is proved by the fact that they have been in Kenya since January, 2014 pursuing this goal. I note that each applicant has annexed a certificate of good conduct issued by the Dutch Police confirming that they are law abiding citizens. The decision to adopt is clearly well thought out and cannot in any way be said to be a mere passing fancy.

Both applicants did assure me that they fully understand the legal consequences of an adoption order and are ready to treat this child as their own biological child. Some of their family members have travelled to Kenya in order to meet and bond with the child and to provide the applicants with moral support. The couple live in their own home and I have seen from their financial reports that they have more than sufficient resources to provide for the needs of the child. The applicants confirm that upon adoption the child will be entitled to take up Dutch citizenship and he will be entitled to basic education at state expense just like all other Dutch children. All in all I noted nothing adverse regarding either applicant. They struck me as a mature couple in a committed union who had made a combined and informed decision to adopt a child. I find both to be suitable adoptive parents.

### **THE CHILD**

The subject child was born on 22<sup>nd</sup> June, 2012 to a lady whose names were given as '*T A*' at Homa Bay District Hospital. The mother abandoned the child at the hospital shortly after birth and disappeared. She has not returned to claim her child and all efforts to trace her have hit a brick wall. The matter was reported to police and the child was committed by the Winam Children's Court to The New Life Home Trust. In view of the abandonment of the child, there is no known person from whom consent for this adoption can be sought and/or obtained. As such I dispense with the requirement for consent in line with section 159(1) (a) of the Children Act.

## **THE APPLICATION**

Section 4(a) of the Children Act obliges a court to give priority to the 'best interests' of the child. This is a child who was abandoned at birth. His birth mother was unable and/or unwilling to take up his care. He was placed in a Childrens Home and faced an uncertain future moving from one institution to another. The adoption will allow this child the opportunity to be raised in a stable home environment with loving parents. I have carefully perused the report filed by the *guardian ad litem* and that filed by the children's officer. Both reports indicate that the child is thriving under the care of the applicants. He has been in their home under a fostering arrangement since 20<sup>th</sup> January, 2014. By all accounts the child has settled well and has developed a bond with the applicants. This was quite obvious even in court. It is clear that the child regards the applicants as his parents. I find that allowing this adoption does serve the best interests of the child. I therefore grant this originating summons in terms of prayers (3), (4) and (5). No order on costs.

**Dated and delivered in Mombasa this 25<sup>th</sup> day of July, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Ms. Bii h/b Ms. Mwatu for Applicants

Court Clerk Mutisya