



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ADOPTION CAUSE NO. 14 OF 2014**  
**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001**

**AND**

**IN THE MATTER OF ADOPTION OF BABY B A**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF THE MINOR  
BABY B A BY A E W AND M W THE APPLICANTS**

**BETWEEN**

**A E W**

**M W.....JOINT APPLICANTS**

**AND**

**KENYA CHILDREN’S HOMES.....DEFENDANT**

**JUDGMENT**

Before court is the originating summons dated 21<sup>st</sup> July, 2014 by which **A E W** (hereinafter referred to as the 1<sup>st</sup> Applicant) and **M W** (hereinafter referred to as the 2<sup>nd</sup> Applicant) seek *inter alia* the following orders

“(a) **THAT** the child **BABY B A** be declared a Kenyan child and a Kenyan citizen.

(c) .....

(d) **THAT** **A E W** and **M W** be authorized to adopt **BABY B A** the minor child.

(e) **THAT** the name of minor child **BABY B A** to change to **B AW**.

(f) **THAT** the Registrar General be directed to enter the name of the child in the adopted Children’s Register in the prescribed form.

**(g) THAT costs of this summons be costs in the cause.”**

On 30<sup>th</sup> July, 2014 the court did approve the appointment of **MS. G W** as ‘*Guardian ad Litem*’. The application was disposed of by way of *vive voce* evidence. The Law regarding adoptions in Kenya is to be found in the Children Act, 2001. Section 156 (1) of said Act provides as follows

**“No arrangement 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 was born in Kajiado, Kenya on 24<sup>th</sup> November, 2012 as evidenced by the annexed certificate of birth serial No. [particulars withheld]. He was therefore about 1½ years old by July, 2014 when this summons was filed. I have seen annexed to the summons a certificate serial number [particulars withheld] dated 12<sup>th</sup> March, 2014 declaring the subject child Free for Adoption. This certificate was issued by the “*Kenya Children’s Home Adoption Society*” which is a registered adoption society in Kenya.

The applicants who both testified before court on 15<sup>th</sup> August, 2014 stated that they are both German Nationals seeking to adopt a Kenyan child. This therefore qualifies as an International adoption and together with the Children Act 2001 it will be guided by the “**Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption**”. Section 162 (c) of the Children Act of Kenya provides that any applicant in a foreign adoption must “*have been authorized and recommended as persons who are suitable (including being morally fit and financially capable) to adopt a foreign child by a competent government authority or court of competent jurisdiction in the country immediately after the making of the adoption order.*” In this regard I have seen the confirmation from ‘*Eltern fur Afrika e.V.*’ an International Adoption Agency supporting the application for adoption by both applicants. In addition I have noted the existence of a certificate serial No. [particulars withheld] approving an Individual Foreign Adoption dated 18<sup>th</sup> September, 2013 issued by the National Adoption Committee of Kenya. In line with the requirements of section 160 (b) of the Children Act I have also noted the existence of a confirmation from the Central Authority for Adoption in Bavaria (Germany) dated 13<sup>th</sup> March, 2013, that an adoption order from Kenya will receive full effect and recognition in Germany and that such an adopted child shall be entitled to receive German citizenship by operation of the Law (automatically). I am therefore satisfied that all the legal prerequisites for this foreign adoption have been met and that the application is properly before the court.

**THE APPLICANTS**

As stated earlier the applicants who are both German citizens are a couple who have been married to each other for the past eight (8) years. Their marriage certificate indicates that the two tied the knot on 15<sup>th</sup> December 2005. The couple have not had any children together. In their evidence the applicants told the court that they made the decision to adopt a child from Kenya because they wish to give a disadvantaged child a good life. Further the 2<sup>nd</sup> Applicant whose own mother was adopted has positive thoughts regarding the adoptive process.

I have carefully perused the Social Enquiry Report prepared by the Ministry for Social Affairs, Health, Women and Family in Germany. The report indicates that both applicants had a normal upbringing in close knit families in Germany. Both still maintain close ties with their parents and siblings. The two who profess the Roman Catholic faith have been in a stable and committed marriage. They want to complete their family by adopting a child. Both applicants are in stable employment as secondary school teachers. I have no doubt that their chosen careers will be of great benefit in child rearing not to mention that the flexibility of their careers will allow each of them to spend adequate time with the child. The couple live in their own home which they purchased in 2009 in a town in the western part of Germany. Annexed photographs of the house show it to be spacious and comfortable and suitable for raising a growing child. Annexed bank statements show that the couple do have at their disposal adequate resources to provide for the child. I have noted that they have a positive recommendation from their

pastor. I also noted that police records availed show that neither applicant has a criminal record in Germany.

In their evidence the applicants told the court that the decision to adopt a child was made jointly. They each confirmed that they fully understood the legal consequences of an adoption order. Their family and friends support their decision. I am convinced that the applicants are a mature couple in a committed marriage who have a genuine desire to provide this child with a good home. Their commitment to the adoptive process is proved by the fact that they have attended counseling sessions for adoptive parents, they have opened themselves up to investigations by relevant authorities and they have been in Kenya since April, 2014 in order to meet and bond with the child. All in all I do not find anything negative in the material placed before me and I find both applicants to be suitable adoptive parents.

### **THE CHILD**

The subject child whose given name is B A was found abandoned immediately after birth on 24<sup>th</sup> November, 2012 in Kitengela. The child summary prepared by the Adoption Agency indicates that the child was taken to Kitengela police station with swollen hands and feet, umbilical cord not tied and he was still covered in birthing fluids. He was immediately rushed to hospital where he was stabilized and the cord was clamped and cut. The child was then admitted at Children's Home and remained there until April, 2014 when the applicants took him under a fostering arrangement. Police reports indicate that all efforts to trace the child's biological parents have failed. To date no person has come forward to claim the child. As such there exists no known person from whom consent for this adoption can be sought and/or obtained. I find that having been so abandoned the child was indeed free for adoption and I further waive any requirement for a consent in line with section 159 (1) (a) of the Children Act. Article 14(4) of the Constitution of Kenya provides as follows

**“(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”**

This child was found in Kenya at hardly one day old. He is therefore presumed to be a citizen of Kenya and I do so declare.

### **THE APPLICATION**

Section 4(a) of the Children Act obliges a court to give priority to the '*best interest*' of the child in determining an application of this nature. This was a child who had been abandoned at birth. Clearly his biological mother was unable and/or unwilling to care for him. The child was rescued and taken to a Children's Home. By a letter dated 28<sup>th</sup> June, 2013 from the OCS Kitengela police station it was confirmed that no person had come forward to claim the child. He faced an uncertain future in Children's Homes and Institutions. By this adoption the child will be allowed an opportunity to live and grow in a loving home environment with parents and family. His basic needs like food, shelter, education, medicare, etc. are all guaranteed.

I have carefully perused the report filed by the *Guardian ad litem* and the Home Report filed by the Children's Department. Visits were made in Kwale County where the applicants are currently living with the child. It was observed that the child has settled well and has bonded with the applicants. This bonding was quite evident to me as I observed them in my chambers. The child utters few words in German and clearly views the applicants as his parents. I also observed that the child was clean, healthy and well fed. I have no doubt that the applicants have been providing adequately for his needs. This adoption certainly does serve the child's best interests. I therefore authorize this adoption. I do grant prayers (b), (d), (e) and (f) of the Originating Summons dated 21<sup>st</sup> July, 2014. No order on costs.

**Dated and delivered in Mombasa this 29<sup>th</sup> day of August, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

.....

.....

.....