



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ADOPTION CAUSE NO. 24 OF 2014**  
**IN THE MATTER OF THE CHILDREN ACT NO. 8 OF 2001**  
**AND**  
**IN THE MATTER OF ADOPTION OF BABY BOY alias A**  
**AND**  
**IN THE MATTER OF AN APPLICATION FOR ORDERS OF ADOPTION OF BABY BOY alias**  
**A BY J-A G AND AKG THE APPLICANTS**

**JUDGMENT**

By way of an originating summons dated 2<sup>nd</sup> October, 2014 J-A G (hereinafter referred to as the 1<sup>st</sup> Applicant) and AKG (hereinafter referred to as the 2<sup>nd</sup> Applicant) seek the following orders:

1. **THAT the applicants J-AG and AKG be allowed to adopt Baby Boy alias A a male child and the said child to be known as TAG.**
2. **THAT LMG and ACG of [particulars withheld], SWEDEN be appointed guardians to the said child in the event the adopters die or become incapacitated before he attains full age.**
3. **THAT the consent of the biological parents of the child be dispensed with.**
4. **THAT the child be presumed to be a Kenyan citizen born at Kiambu District Hospital.**
5. **THAT the Principal Immigration Officer be directed to issue the passport to the child when required to do so.**
6. **THAT the Registrar-General makes the appropriate entries in the Adopted Children's Register."**

The application was disposed of by way of oral evidence taken in chambers. The court did on 15<sup>th</sup> October, 2014 approve the appointment of Ms. G W as 'Guardian ad litem'. Section 156 (1) of the Children Act of Kenya 2001 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 on 7<sup>th</sup> May, 2013. He was therefore about 1½ years old when this adoption application was filed. Annexed to the Originating Summons is a certificate serial No. xxxx dated 15<sup>th</sup> January, 2014 declaring the child Free for Adoption. The certificate has been issued by the **Kenya Children’s Home Adoption Society** which is a registered Adoption Society.

The two applicants herein are Swedish citizens who are applying to adopt a Kenyan child. This therefore is an International Adoption and will be guided by the Children Act of Kenya, 2001 and **‘The Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption.’** Section 162 of the Children Act provides that applicants for international adoption must be approved and recommended as being morally fit and financially capable by a competent Government authority in their local jurisdiction. In this regard I have seen consent dated 20<sup>th</sup> October, 2013 issued to the applicants by the Municipal Social Welfare Committee of ‘Umea’ where they reside. Likewise I have the approval certificate for a foreign adoption dated 29<sup>th</sup> April, 2014 issued to the applicants by the National Adoption Committee of Kenya. As such I am satisfied that the legal prerequisites for this foreign adoption have all been met.

**THE APPLICANTS**

The applicants are a married couple of Swedish Nationality who live in a town called Umea in Sweden. A copy of their marriage certificate shows that they solemnized their union in accordance with the Marriage Code of Sweden on 21<sup>st</sup> July, 2007. The couple have borne no biological child together due to medical complications hence their decision to adopt. I have carefully perused the case Investigation Report prepared by the Swedish National Board of Health and Welfare regarding the two applicants. The report indicates that both had a normal Swedish upbringing in close knit families. They both retain close ties with their parents and siblings who are aware of and greatly support their decision to adopt. Both applicants are in stable careers, the 1<sup>st</sup> applicant is an Assistant Professor at the *[particulars withheld]* whilst the 2<sup>nd</sup> applicant works as a Human Resources Consultant with the *[particulars withheld]*. The couple live in the Taveleliden district of *[particulars withheld]* in their own home. The location is quiet and serene and is populated by several other young families. The two are both Christians being members of the Church of Sweden. They are financially stable as indicated by their bank records. Both were examined by a doctor and found to be mentally and physically fit and well able to take up the responsibility of raising a young child. Each applicant has annexed a copy of a certificate issued by the Swedish National Police Board indicating that neither has a police record.

The couple did testify before me in court. Each confirmed that they fully understood the legal implications of an Adoption Order. They confirmed that an adoption order issued by a Kenyan court will be recognized and given full effect in Sweden. The child upon adoption will be eligible to acquire Swedish nationality. The applicants commitment to this process demonstrated by the fact of their having travelled a long distance, and taken several months off work to stay in Kenya and fulfill all adoption requirements. Both attended a parental education programme for prospective parents in their home country as per the certificate dated 3<sup>rd</sup> April, 2013 which is further evidence of their commitment to the process. From my own observation the applicants were a mature couple in a committed marriage who have a genuine desire to provide this child with a good home. In my view they are suitable adoptive parents.

**THE CHILD**

The subject child is a boy-child who was abandoned shortly after birth in the Mlolongo area of Athi River. The child was left in the home of a woman known as ‘CN’ by his birth mother who on 14<sup>th</sup> May, 2013 had approached the women seeking a place to spend the night. On 15<sup>th</sup> May, 2014 when the said ‘CN’ returned from her work place at 10.00 a.m. she found the child’s mother had vanished leaving the child lying on the bed alone. The abandonment was reported at Mlolongo police station. The child was then taken to Thomas Barnados House for care and protection. It is here that the applicants met the

child. Article 14 (4) of the Constitution of Kenya provides:

**“Any 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.”**

Since the child was abandoned two weeks after birth in Kenya I hereby declare him to be a citizen of Kenya by birth. From the time the child was rescued to date no person has come forward to claim him. A letter dated 18<sup>th</sup> November, 2013 from the officer commanding Mlolongo police station confirms this. Given that there is no known person from whom consent for this adoption can be sought and/or obtained I do hereby waive the requirement for consent in line with section 159 of the Children Act.

### **THE APPLICATION**

Section 4(a) of the Children Act obliges a court to give priority to the **best interest** of the child in determining applications of this nature. I have carefully perused the Home Report dated 26<sup>th</sup> October, 2014 prepared by the Children Officer in Msambweni District as well as the Report of the *Guardian ad litem* filed in court on 6<sup>th</sup> November, 2014. The child has been living with the applicants at their rented premises at [*particulars withheld*] in Diani. Both reports indicate that the child has settled well into his new surroundings. He is eating and sleeping well and is putting on weight. The applicants are committed and hands-on parents who are able to give the child much attention and time. The father of the 2<sup>nd</sup> applicant is reported to have travelled to Kenya in order to give his support and encouragement to the applicants. No authority has noted anything adverse in the manner in which the applicants handle the child. I was also able to observe the child when they appeared before me. He was a happy, healthy and lively child who is obviously receiving the best care. He has clearly bonded with the applicants and now views them as his parents. This child faced an uncertain future in homes and institutions. Whilst we laud the efforts being made by these bodies they are not able to replicate a loving home environment. This adoption allows the child the opportunity to be raised like other children in a stable home with loving parents and extended family. This certainly advances the **‘best interests’** of the child. I therefore allow this application for adoption. I allow the Originating Summons dated 2<sup>nd</sup> October, 2014 in terms of prayers (1), (2), (3), (4), (5) and (6). No order on costs.

**Dated and Delivered in Mombasa this 28<sup>th</sup> day of November, 2014.**

**M. ODERO**

**JUDGE**