



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Adoption Cause 286 of 2012**

**IN THE MATTER OF THE CHILDREN'S ACT**

**(NO. 8 OF 2001)**

**AND**

**IN THE MATTER OF BABY D (MINOR)**

**JUDGEMENT**

The applicants, S.W.A.O and N.A.O, are a married couple from Vancouver of British Columbia in Canada. They have brought an Originating Summons dated 13<sup>th</sup> December 2012 seeking permission to adopt Baby D.

Baby D, the subject of these adoption proceedings, is an abandoned female child. She was born on 13<sup>th</sup> March 2006 to a single mother known as M.W.W. The biological father of the child is unknown. The mother fell ill and no relatives could be traced who could possibly care and protect the child during her mother's illness. Consequently, the child was taken by the Missionaries of Charity, together with her sister M. The mother was to die three months later on 25<sup>th</sup> October 2009. As her close relatives could not be traced her body was buried at a public cemetery. Following her mother's death and the failure of the efforts to trace their blood relatives, the child was committed by the Nairobi Children's Court to the Missionary of Charity from where she was placed with the applicants on 17<sup>th</sup> September 2012. The Little Angels Network adoption society has compiled a detailed report on this background dated 24<sup>th</sup> April 2012 and filed in court on 16<sup>th</sup> January 2013. The Kenya Children's Homes Adoption Society freed the child for adoption by their certificate dated 24<sup>th</sup> April 2012.

To facilitate the adoption the applicants have been assessed by the guardian *ad litem*, E.M.K, and the Director of Children's Services. The two have compiled and filed their reports in court dated 16<sup>th</sup> February 2013 and 27<sup>th</sup> February 2013, respectively. There is also an international adoption home study report by the Family Services Adoption Agency of Vancouver, British Columbia dated 6<sup>th</sup> January 2011. All these reports are favourable and recommend the proposed adoption. The applicants have demonstrated that they have the financial and emotional capability and capacity to take care of the child. Details of their employment and financial backgrounds have been displayed in the papers attached to the application. There are also documents from the authorities in British Columbia which show that the applicants are persons of good conduct. The child appears to have bonded well with the applicants and considers them to be her parents. I also note that the applicants are, in a separate application, seeking to adopt a sibling of the subject child.

This proposed adoption has been approved by the Provincial Director of Adoption, Ministry of Children

and Family Development of British Columbia, in accordance with Canadian law. Their letter of approval is dated 17<sup>th</sup> May 2011. According to the Citizenship and Immigration Canada document dated 5<sup>th</sup> December 2012 and availed by the Canadian High Commission to Kenya, an adoption, such as this which is done in conformity with the 1993 Hague Convention, will be recognised by Canada and a child so adopted would, on application, be granted permanent residency or citizenship. Kenya is not among the countries with suspension on adoptions by Canadian citizens. This is confirmed by the Canadian High Commission to Kenya by their letter dated 22<sup>nd</sup> April 2013; that a Kenyan adoption would be recognised in Canada and the child the subject of the adoption would be entitled to residency and citizenship. This matter of acquisition of citizenship by adoptees is dealt with in section 5.1 of the Citizenship Act of Canada. The proposed adoption received local approval through the National Adoption Committee of Kenya on 21<sup>st</sup> March 2012, a formal approval certificate dated 11<sup>th</sup> April, 2012 was issued accordingly.

In the opinion of this court it would be in the interests of the child that the child is adopted by the applicants. The applicants will be able to provide a home and a family for the child to grow up in and thereafter be a useful member of the family. Consequently, the applicants shall assume all 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. The applicants have been made aware that once the adoption order is made it shall be final and binding during the lifetime of the child and that the child shall have the right to inherit their property. The applicants cannot give up the child owing to any subsequent unforeseen behaviour or other changes in the child.

The child in question is an orphan. Her only known parent died, and her close relatives could not be traced. The applicants have been with this child since 17<sup>th</sup> September 2012. The reports on record indicate that bonding has taken place. It is the considered opinion of this court that this adoption will be in the best interests of the orphaned and presumed abandoned female child. The applicants have demonstrated that they would be worthy parents to her.

The Director of Children Services, the custodian of public interest for the purposes of this process, had expressed certain reservations both in his report and at the hearing of the Originating Summons. After examining the papers filed by the applicants in the Originating Summons I found myself in agreement with the Director of Children Services that there were certain matters that were not clear, and that needed clarification. On 18<sup>th</sup> April 2013, I directed the applicants to file further papers to clarify matters. This they did through the affidavit sworn on an unknown date in April 2013 by S.W.A.O and filed in court on 26<sup>th</sup> April 2013. I have carefully gone through the material presented and I am satisfied that all the legal requirements for an international adoption have been met.

The Originating Summons dated 13<sup>th</sup> December 2012 is allowed. The applicants, S.W.A.O and N.A.O, are hereby allowed to adopt the child, Baby D, who shall be hereafter known as F.E.D.O. R.H.W and M.E.W of M[...], Canada, shall be the legal guardians of the child should misfortune befall the applicants. The Registrar-General is hereby directed to enter this adoption order in the adoption register. The guardian *ad litem* is accordingly discharged.

**DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF April, 2013.**

**W.M. Musyoka**  
**Judge**