



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ADOPTION CAUSE NO. 12 OF 2013**

**IN THE MATTER OF: APPLICATION FOR ORDERS OF ADOPTION OF THE MINOR E.  
F. ALIAS UNKNOWN BABY BY S. N. AND J.N.V. D.H. THE APPLICANT**

**BETWEEN**

**S. N. AND**

**J. N. V. D. H. .... JOINT APPLICANTS**

**AND**

**L. A. N. .... RESPONDENTS**

**JUDGEMENT**

Before this court is an application made by way of an originating summons which was filed in court on 23.7.2013.

The joint applicants namely **S. N.** (hereinafter referred to as the 1st Applicant) and **J. B.V. D. H.** (hereinafter referred to as the 2nd Applicant) have come to court seeking to adopt the child known as '**E. F. ALIAS UNKNOWN BABY**', a male child now aged about 2 ½ years. The joint applicants further pray that upon adoption the name of the child to change to **E. 'F. N.** On 29.7.2013 the court did approve the appointment of **H. A. M.** as 'guardian and litem' in this case. The main application was heard by way of vive voce evidence on 3.9.2013 on which date both applicants, the subject child, the guardian and litem, an officer from the Adoption Agency Little Angels Network and the Kwale County Children Co-ordinator were all present in court.

The guardian and litem, adoption agency and Kwale Children Co-ordinator had all prepared reports regarding this application for adoption which reports had been duly filed in court.

In their evidence the joint applicants told the court that they were both citizens of The Netherlands and had travelled to Kenya with the desire to adopt a child. As such this qualifies as an '**International Adoption**' and this is governed by the provisions of Section 162 of the Children Act 2001 of Kenya as well as the provisions of *The Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption* (Hague Adoption Convention) which Kenya has ratified. Aside from the provisions governing international adoption set out in Section 162 of the Children Act, the general provisions governing adoptions in Kenya as contained in the said Act will also apply. Section 156 (1) of

the Children Act sets out the prerequisites for the adoption of a child and provides as follows:

***“156 (1) 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.”***

In this case the child was born in January 2011. As such he was well over 2 years old by March 2013 when this application was being filed. The little angles Network being a registered Adoption agency have together with their report filed their certificate No. [Particulars withheld] dated 18.7.2012 declaring the child ***'free for adoption'***. In addition I have seen and noted in the annexures to this application the **Approval Certificate for an Individual Foreign Adoption application** by which the National Adoption Committee in its sitting of 11th December 2012 approved this adoption. Having therefore satisfied myself that all the prerequisites and necessary approvals for this International adoption have been met I will now proceed to consider the merits of this particular application.

As stated earlier the joint applicants are a married couple both of whom are citizens of The Netherlands. Proof of the marriage is the annexed marriage certificate serial No. [Particulars withheld]. In their evidence they told the court that they have been unable to bear a child of their own and for that reason decided to adopt a child. They have annexed an Investigative Report from the Child Welfare Council of the Ministry of Safety and Justice in Netherlands. I have carefully perused this report which is largely favourable. It indicates that both applicants were raised in stable families and have strong links with their family members. Neither has any criminal background. The report confirms the evidence of the applicants that they have been unable due to medical reasons to have a child of their own, but they both desire to have and raise a child in order to complete their home. The facts that the extended family support and welcomes their decision to adopt is evidenced by the fact that both the 1st and 2nd applicants mothers took the time and incurred the expenses of coming to Kenya in order to meet and bond with the child. This is a step which even the Kwale Child Co-ordinator acknowledged to be unusual.

The applicants are both mature persons and both hold stable jobs in their home country and own a home in Utrecht where they live. They both confirmed live to the court that they understood fully all the obligations that would arise from an order of adoption and further confirmed that they would treat the child as their own biological child. Bank accounts annexed indicate that they do make sufficient income to cater for the needs of a growing child. They are both willing to allow follow up visits by social workers in the Netherlands in order to monitor the wellbeing of the child and it is confirmed that upon adoption the child will become a resident of the Netherlands and will be accorded all rights due as such. The couple have indicated that upon adoption order being confirmed they will immediately secure a passport for the child and travel with him back to their country to begin a life as a family.

I have perused and considered the reports filed by the Adoption Agency as well as by the Children's Department. Again both are favourable. Mr. Gitau the Kwale Children's Co-ordinator confirmed having raised the issue of potential discrimination arising from cross-cultural adoption. The applicants indicated that they were fully alive to this possibility and would be ready to deal with it if it indeed crops up. Both have undergone a period of counseling in their home country in order to prepare them for their new role as parents. I myself did observe the applicants as they testified before me. They struck me as honest, genuine people who had a genuine desire to adopt this child and forge ahead as a family.

Regarding the child, the history given by the adoption agency indicates that he was abandoned by his mother into the hands of a good samaritan when he was about 2 weeks old. The letter dated 6.5.2011 from the OCS Kondele police station confirms his abandonment. The child was then made a ward of court and was eventually handed over to the children's home. Medical reports indicate that the child is healthy in all respects. In any matter concerning the welfare of a child and specifically in matters of adoption Section 4 (a) of the Children Act exhorts a court to give priority to the ***'best interests'*** of the child. As an abandoned child, this child faced an uncertain future being raised in an institution. He now has the opportunity to grow up in a normal home environment with loving parents and family. This in my view would certainly be in his best interests. The child has been in the care of the applicants for the past five (5) months from April 2013. He has bonded with the applicants. This was quite evident even to

myself as I observed his interaction with the applicants. I saw a happy, healthy boisterous 2 year old who was dearly at ease with the applicants, played freely with his toys and even uttered a few words in Dutch. Having so bonded with the applicants I find it would be cruel to pull him away from his new family.

On the issue of consents as per Section 158 (4) (1) the Children Act it is confirmed that after his abandonment the child remained in the children home for a full six (6) months and no person came forward to claim him. The identity and whereabouts of the biological mother are unknown. The final police report indicates that no person has gone to the police station to claim the child. As such there is no known person from whom a consent can be required. Therefore I do hereby dispense with the requirement for any consent.

Finally based on the material placed before me and based upon my own enquiry in court I am satisfied that the best interest of this child will be served by allowing this adoption. As such I do hereby grant this application to adopt the child E.F. and I do further direct that the child shall henceforth be known as E. 'F. N.'.

I now release this child to his new parents with a prayer that they experience a full and blessed family life. I make no order on costs.

**Dated and Delivered in Mombasa this 20th day of September 2013.**

**M. ODERO**

**JUDGE**

**In the presence of:**

**Ms Anyumba for Applicants**