

IN THE MATTER OF B.H.M

RULING

Before me is an application for an adoption order, dated 31st March 2011, governed by **Sections 154, 156(1), 157(1), 158(1) (a) and 4(a), 159(4) (6) (7) and (8) (a), 160 (1) (2) and (4), 162, 164(1) and 170 of the Children’s Act, 2001(Act No. 8 of 2001) and Sections 24 of the Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya) (by dint of which the Adoption Rules under the Adoption Act) Cap 143) (repealed) apply).**

The applicants herein, **A.C.G.M.G.S** (the 1st applicant) and **M.G.J.M** (the 2nd applicant), a married couple of **NETHERLANDS**, have moved the court, praying that they be authorized to adopt and rename a baby boy, presently identified and known as **B H M**, who, for the purposes of this ruling shall, where necessary, be referred to either **“Baby H”** or **“the minor”**.

The 1st applicant, is a Belgian National aged 38 years while the 2nd applicant is a Dutch National aged 36 years. The applicants were married in Hulst on 21st February 2008 and are childless. Both of them are gainfully employed in Hulst, Holland where they currently reside. The couple does not practice any religion but having been brought up as Roman Catholics, they have considered the role played by religion in moulding and influencing growth as part of **“general building”**. They would respect the right of the adoptive child to choose his religion and would support him in making his decision and guide him to steer away from extremism. The applicants propose to give their family name to the minor once an adoption order is obtained from this court, with authority to rename him as proposed, and to secure for him Dutch Citizenship. The applicants have filed the requisite statement and affidavit in support of the application, bearing all the supporting documents as necessary.

On 2nd December 2011, on the applicants’ application, **M W M** of P.O. Box [...], NAIROBI was appointed the Guardian ad Litem for the purposes of this adoption. She has filed a comprehensive report dated 17th January 2012 primarily stating that **Baby H** has bonded well with adoptive parents, is happily settled in their care and is well taken care of. She also vouches for

the adoptive parents' capability to bring up **Baby H** well and to provide for him in a manner that will guarantee not only his necessary day to day needs and education but also guarantee him an inheritance. In the unlikely event of their being incapacitated or dying, before the minor attains the age of majority, the adoptive parents have appointed **T.M.V.Z** and **C.C.A.V.Z** to be the legal guardians of the minor. The guardian ad litem recommends, therefore, that the applicants be granted the authority to adopt **Baby H** while granting, also, the incidental prayers sought in the application, to complete the process.

The applicants have furnished the court with all the documentation necessary to support the *ex parte* Originating Summons as required under the relevant adoption laws and rules. At the hearing of the application, it was proved, with reference to the said documentation that **Baby H** was found abandoned in Kijabe on 6th September, 2009 by Good Samaritans, who took him to the Kijabe Mission Hospital after which they reported the find at Kijabe Police Station. The police, after recording a report of the finding, referred the case to the District Children's office, Kiambu.

Efforts to trace the minor's parents proved futile. On 2nd December 2009 the minor was formally committed to Nest Children's Home by an order of the Senior Resident Magistrate Children's Court Kiambu on the recommendation of the District Children's Officer. The court has been shown the committal order dated 2nd December 2009. By a letter dated 15th June 2010, Kijabe police confirmed that no-one had come up to claim the minor.

On 16th June 2010, **Baby H** was certified free for adoption under a Certificate of Declaration to that effect issued by the Little Angles Network, an accredited adoption society. He was thereafter released and placed under the foster care of the applicants on 17th August 2011 under a Release Agreement entered between them and The Nest annexed as annexure "AM5" to the applicants' supporting affidavit. **Baby H** has been under their care and custody since. The requisite studies and investigations have been carried out in regard to applicants' suitability to adopt the infant and reports duly filed. The report by the Children's Officer, ordered by this court on 2nd December 2011 was filed on 17th January 2012, recommending the adoption and renaming of **Baby H** by the applicants, who, according to the Director of Children's Services have proved that they are both financially and socially capable of permanently fulfilling parental responsibilities over the minor.

In considering this application, I have perused the reports filed by the Guardian ad Litem and the Director of Children Services, and thoroughly examined all the documentation filed in support thereof. The applicants' suitability has been carefully assessed and positive recommendations filed by credible persons. I am satisfied that the applicants do possess the requisite legal capacity to adopt the infant, and that they do understand the entire adoption process, and its future implications for themselves as a family and in particular, the need to provide the best for the adopted minor all his life. I find them to be stable, medically fit and financially able to adopt **Baby H**. They have undertaken and bound themselves to bring him up as one of their own, in a healthy, happy and secure environment.

Considering the above, I have no hesitation in allowing the application, being satisfied that the proposed adoption is in the best interests of **Baby H**. Accordingly, the Originating Summons is hereby allowed and orders granted in terms of prayers 2,3 and 4 thereof. Further, and in accordance with the undertaking by Stichting Africa, dated 17th March 2011, the adoptive parents shall ensure that from the date of arrival in Holland with the child and for the next 3 years, Stichting Africa submits a quarterly report on the child to Little Angels Network, Nairobi, Kenya.

DATED, SIGNED and DELVIERED at NAIROBI this 14th DAY OF February 2012.

M.G. MUGO

JUDGE

In the presence of :

Mr. Mwenda holding brief for Mr. Mbanya for the applicants.