

IN THE MATTER OF BABY Z.M ALIAS H.M

RULING

Before me is an application for an adoption order, dated 21st November 2011, brought under **Sections 154, 156,(1) 157(1), 158(1) (a) 2(b) and 4 (e) 159(1) (a) (i) and (4), 160(1),(2) (4) 162, 163(1),164(1) and 170 (1) (2) (a) (5) of the Children’s Act, 2001 (Act No.8 of 2001) and Section 22 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Provisions Act (Chapter 2 of the Laws of Kenya) (by dint of which the Adoption Rules under the Adoption Act (Cap. 143) (repealed) apply).**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 **N.H.L.O** (1st applicant) and **K.M.S** (the 2nd applicant), a married couple, of **SWEDEN** have moved the court, praying that they be authorized to adopt and rename a baby boy presently identified and known as **BABY Z.M ALIAS H.M** who, for the purposes of this ruling shall, where necessary, be referred to either as **Baby M**, the “*minor*” or the “*child*”. Both applicants are Swedish Nationals and were in court for the hearing of this application.

The 1st applicant is aged 49 years old, while the 2nd applicant is 46. The applicants were married on 15th May 2004 and have one other foster-child also adopted from Ethiopia, **V.M.M.S.O**, and who has been living with them since 2009. The adoptive parents are gainfully employed in Sweden where they currently reside. They also own real estate. The family professes the Christian faith and are members of the Church of Sweden, where V was christened. Theirs is a monogamous marital union which they view as a partnership between equals, and which they are committed to preserve. They share common values and have respect for a harmonious family life and social wellbeing. The applicants have proposed a new name which they intend to give to the minor once an adoption order is obtained from this court, with authority to rename him as proposed. The applicants have filed the requisite statements and affidavits in support of the application, bearing all the supporting documents as required by the law. These include financial/income statements and a home study report which highly recommends the applicants as adoptive parents’ despite their being above the allowable age limit in Sweden, which is 43 years.

On 27th February 2012, on the applicants' application, **P.O.O** of P.O. Box[...] Nairobi was appointed the Guardian ad Litem for the purposes of this adoption. She has filed a report dated 23RD February 2012, primarily stating that **Baby M** has bonded well with the adoptive family, is happily settled in their care and is well taken care of. She also vouches for the adoptive parents' suitability and capability to bring up the child and the sister well and to provide for both children in a manner that will guarantee not only the necessary day to day care and attention but also the best upbringing for the adopted minor, **Baby M**.

In the unlikely event that they become incapacitated or die, before the child attains the age of majority, the adopting parents have appointed **A.A.N.W and P.O.N** to be the legal guardians of the adopted child. The two have consented so to act. The Guardian ad Litem recommends that the applicants be granted the authority to adopt the infant and that the court grants, also, the incidental prayers sought in this 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. They have produced, *inter alia* the requisite approval of the Swedish Government, through its Ministry of Justice, to adopt a second Foreign Child, as well as the approval by the Kenyan Adoption Committee of the Directorate of Children's Services.

At the hearing of the application, it was submitted that **Baby M** was born on 15th September 2010 and abandoned at the Kisii Level 5 Hospital by his mother. The matter was reported to the police at Kisii police station vide OB NO: 55/17/9/2010. He stayed at the Hospital until 12th November 2010 when he was admitted at the New Life Home Trust Kisumu, pursuant to a committal order issued by the Children's Court, Kisii. The court has been shown the committal order dated 12th November 2010.

The Kisii police having formally informed New Life Home that no claim had been made with them over the infant, **Baby M** was certified free for adoption under a Certificate of Declaration to that effect issued by the Kenya Children's Home, an accredited adoption society, on 18th August 2011. He was thereafter released and placed under the foster care of the applicants on 14th October 2011 under a Foster Care Pending Adoption Agreement entered between them and Kenya Children's Homes, annexed as annexure "**OS-6**" to the applicants' affidavit in support of the adoption application. The minor

has been under their care and custody since.

The requisite studies and investigations have been carried out in regard to the applicants' suitability to adopt the infant and reports therefore duly filed. The report by the Director of Children's services, ordered by this court on 27th January 2012 and was filed on 13th February 2012, recommending the adoption and the renaming of **Baby M** by the applicants, who, according to the Director of Children's Services have proved that they are financially and socially capable of permanently fulfilling parental responsibilities over the infant, special consideration being given to the fact that they have previously adopted another African child who is thriving happily under their care in Sweden where she has acquired Swedish Citizenship.

In considering this application, I have perused the reports filed by the Guardian ad Litem and the Director of Children's Services, and thoroughly examined all the documentation filed in support thereof also the pre-consent investigation (Home study report by the Swedish National Board of Health and Welfare dated 7th October 2010. 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 child all his life. I find them to be financially able, medically and morally fit to adopt **Baby M**. 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 M**. Accordingly, the Originating Summons is hereby allowed and orders granted in terms of prayer 3 thereof. I further order and direct that the Registrar General makes the necessary entries in the register in recognition of this adoption. The applicants shall ensure that the undertaking by the Swedish adoption agency Children Above All Adoptions Sweden, abides with the terms of its undertaking of 1st February 2011, and in particular to ensure the filing of annual progress reports on the child with the Kenya Children's Home Adoption Society for the first 3 years of this adoption.

DATED, SIGNED and DELVIERED at NAIROBI this 23rd DAY OF March 2012.

M.G. MUGO
JUDGE

In the presence of :

Miss Kiguatha for the applicants.